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The Domestic Analogy Revisited: Hobbes on International Order

ABSTRACT. This Essay reexamines Thomas Hobbes's understanding of international order. Hobbes defended the establishment of an all-powerful sovereign as the solution to interpersonal conflict, and he advanced an analogy between persons and states. Extending this "domestic analogy," theorists following Hobbes have supposed that a global sovereign would prove the solution to interstate conflict. Yet Hobbes himself never proposed a global sovereign, which has led some scholars to diagnose an apparent inconsistency in his philosophy.

This Essay seeks to resolve that inconsistency, drawing on Hobbes's theory of the passions and his hope for radical political transformation. Hobbes believed that the solution to international disorder was not analogous but rather identical to the solution to domestic strife: both would be overcome through the establishment of a "well-ordered commonwealth." Hobbes argued that a state capable of securing peace within its borders was unlikely to make aggressive war outside them. The radical transformation he envisaged in domestic politics would thus in itself mitigate and perhaps even overcome international conflict.

This "realist-utopian" position aligns Hobbes more closely with later social-contract theorists, including Jean-Jacques Rousseau, Immanuel Kant, and John Rawls. It also invites a reconsideration of the foundational principles of international law, with implications for contemporary problems from humanitarian intervention to economic integration. Hobbes's realist-utopianism provides a needed corrective not only to the narrowly defined realism that has long claimed his imprimatur, but also to realism's rivals, which unwittingly share its premises.

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INTRODUCTION

In modern discussions of international relations, the ideas of Thomas Hobbes are usually encountered in the context of the so-called realist position developed in the mid-twentieth century by political scientists such as Hans Morgenthau.¹ According to realists, the international domain is anarchic and therefore dangerous, exemplifying the “state of nature” that Hobbes famously described as a “war of all against all.”² Realism posits that each state struggles for survival and preeminence against all others.³ Temporary global stability may be achieved through the power of one dominant country, strong alliances, or an international balance of power, but realists analyze these episodes assuming competitive states in a potentially dangerous anarchy.⁴ A conceivable way to escape from this condition, some have supposed, would be to establish an overarching coercive authority or global hegemon.⁵ However, realists generally consider that solution infeasible, at least as a permanent condition.⁶

1. See HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (5th ed. 1978) (presenting a “Hobbesian” view of a foundational and irresistible struggle for power among nations); see also sources cited *infra* note 5 (discussing Morgenthau’s views). For an analysis of realism, see CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 27–34 (1979), which outlines and criticizes a similar “Hobbesian” conception of realism.
2. THOMAS HOBBS, *ON THE CITIZEN* 30, 94, 105 (Richard Tuck & Michael Silverthorne eds. & trans., Cambridge Univ. Press 1998) (1647) [hereinafter HOBBS, *DE CIVE*].
3. For the canonical presentation of this argument in what is sometimes called “neo-realism,” see KENNETH WALTZ, *A THEORY OF INTERNATIONAL POLITICS* 118 (Waveland Press 2010) (1979), which describes the imperative of state self-preservation and expansion. For an excellent history of realism and its variants, see MICHAEL C. WILLIAMS, *THE REALIST TRADITION AND THE LIMITS OF INTERNATIONAL RELATIONS* (2005).
4. See WALTZ, *supra* note 3, at 116–23 (offering a realist account of balance-of-power theory); see also WILLIAMS, *supra* note 3, at 135–36.
5. Morgenthau came to support a global state owing to the dangers posed by nuclear war. See CAMPBELL CRAIG, *GLIMMER OF A NEW LEVIATHAN: TOTAL WAR IN THE REALISM OF NIEBUHR, MORGENTHAU, AND WALTZ* 108–09 (2003) (discussing Morgenthau’s transition to this view). From the perspective advanced in this Essay, Morgenthau’s shift appears to be a straightforward conceptual evolution reflecting an ersatz Hobbesianism in both the diagnosis of, and the proposed solution to, international conflict. Cf. HANS J. MORGENTHAU, *THE CONCEPT OF THE POLITICAL* 39–40 (Hartmut Behr & Felix Rösch eds., Maeva Vidal trans., Palgrave Macmillan 2012) (1933) (discussing the mistaken embrace of Morgenthau as a *Realpolitiker* based on a narrow slice of his writing). The call for a global Leviathan is echoed in a variety of other analyses of the dangers posed by thermonuclear competition. See, e.g., FURIO CERUTTI, *GLOBAL CHALLENGES FOR LEVIATHAN: A POLITICAL PHILOSOPHY OF NUCLEAR WEAPONS AND GLOBAL WARMING* 197–206 (2007); Alexander Wendt, *Anarchy Is What States Make of It: The Social Construction of Power Politics*, 46 INT’L ORG. 391, 392–94 (1992); see also CHIARA BOTTICI, *MEN AND STATES: RETHINKING THE DOMESTIC ANALOGY IN A GLOBAL AGE* 134–35 (Karen Whittle trans., 2009) (discussing how Norberto Bobbio and

The realist vision of the international order is frequently contrasted with the so-called liberal view, which sees states as cooperating to construct a framework of cosmopolitan law, perhaps even building to a pacific global federation.⁷ This position is often seen as anticipating contemporary democratic or liberal peace theory, which argues that liberal-democratic states are less likely to make war against other liberal democracies.⁸ Liberalism distinguishes itself from realism by arguing that the spread of representative democracy, commercial interdependence, international law, and human rights contributes to a more pacific and stable world.⁹

The grand figures of the social-contract tradition are commonly drafted into the service of these two dominant approaches to international relations:

Furio Cerutti theorize the need for world government in light of the nuclear threat); Luis Cabrera, *Introduction to GLOBAL GOVERNANCE*, GLOBAL GOVERNMENT 1, 4-11 (Luis Cabrera ed., 2011) (discussing a variety of midcentury and contemporary proposals for world government in light of the nuclear threat).

6. WALTZ, *supra* note 3, at 201-02.
7. For an analysis of international law through the lens of liberalism, see Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT'L L. 503 (1995); and Anne-Marie Slaughter, *A Liberal Theory of International Law*, 94 AM. SOC'Y INT'L L. PROC. 240 (2000). For a sympathetic criticism of Anne-Marie Slaughter's account, see José E. Alvarez, *Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory*, 12 EUR. J. INT'L L. 183 (2001). See also *infra* notes 8-9, 13 and accompanying text (discussing cosmopolitan legal thought).
8. The modern discussion of democratic or liberal peace theory begins with Michael Doyle's analysis of the 1980s and has been widely followed and commented upon. See Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs* (pts. 1 & 2), 12 PHIL. & PUB. AFF. 205, 323 (1983); Michael W. Doyle, *Liberalism and World Politics*, 80 AM. POL. SCI. REV. 1151 (1986). For the original inspiration, see IMMANUEL KANT, *Perpetual Peace: A Philosophical Sketch*, in POLITICAL WRITINGS 93, 93-130 (Hans Reiss ed., H.B. Nisbet trans., 2d ed. 1991). For a careful discussion, see DORA ION, *KANT AND INTERNATIONAL RELATIONS THEORY: COSMOPOLITAN COMMUNITY-BUILDING* 61-145 (2012), which analyzes *Perpetual Peace*, contemporary democratic peace theory, and other theories of pacific communities of states. For a discussion of Kant's theory in light of the domestic analogy, see Chiara Bottici, *The Domestic Analogy and the Kantian Project of Perpetual Peace*, 11 J. POL. PHIL. 392 (2003).
9. For important contributions to what in the 1980s was called "neoliberalism" or "neoliberal institutionalism" in international relations (which differs from neoliberal economic ideology), see ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984); *NEOREALISM AND ITS CRITICS* (Robert O. Keohane ed., 1986); and Joseph S. Nye, Jr., *Neorealism and Neoliberalism*, 40 WORLD POL. 235 (1988), which reviews *After Hegemony: Cooperation and Discord in the World Political Economy*. For a seminal contribution to the later iteration of liberalism in international relations, see Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513 (1997). See also David Long, *The Harvard School of Liberal International Theory: A Case for Closure*, 24 MILLENNIUM 489 (1995) (suggesting that the liberal school of international relations undermines international liberalism through its commitments to a state-centric realism).

Hobbes is foundationally associated with realism and Immanuel Kant with liberalism. Discussions of Hobbes in legal scholarship tend to follow the characterization of his work in political science.¹⁰ With respect to international conflict, scholarly attention has focused on whether international law can convert interstate anarchy into an orderly system.¹¹ A “Hobbesian” position in international relations is associated with skepticism about the legitimacy or effectiveness of international law, usually owing to problems of enforcement. By contrast, scholars supportive of international lawmaking, whether international or supranational,¹² often adopt an anti-realist stance, which they associate with Kant. Cosmopolitan legal theory, of which Kant is considered the founding theorist, proposes a global order built on shared law and morality, in stark contrast to so-called Hobbesian realism.¹³

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10. Intensive discussions of Hobbes in legal scholarship are as rare as the fleeting reference to him is common. For what seems to be the only sustained reflection on Hobbes in the legal-academic literature, see James Boyle, *Thomas Hobbes and the Invented Tradition of Positivism: Reflections on Language, Power, and Essentialism*, 135 U. PA. L. REV. 383 (1987). For a recent discussion of Hobbes on the rule of law among nations, which situates his arguments in relation to mid-twentieth-century views of international law and draws on recent historical scholarship, see David Dyzenhaus, *Hobbes on the International Rule of Law*, 28 ETHICS & INT’L AFF. 53 (2014). On the fragmentation of twentieth-century studies of Hobbes across several disciplines, see Gabriella Slomp, *The Politics of Motion and the Motion of Politics*, in INTERNATIONAL POLITICAL THEORY AFTER HOBBS 19, 19–21 (Raia Prokhovnik & Gabriella Slomp eds., 2011).
 11. For discussions of the nature of enforcement and compliance in international law, see Anthony D’Amato, *Is International Law Really “Law”?*, 79 NW. U. L. REV. 1293 (1985); Robert Howse & Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 GLOBAL POL’Y 127 (2010); and Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997) (book review). For skepticism about international law (owing largely to its apparent unenforceability), see JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005); and John R. Bolton, *Is There Really “Law” in International Affairs?*, 10 TRANSNAT’L L. & CONTEMP. PROBS. 1, 8 (2000).
 12. The terminological distinction between international and supranational law is marked in Europe, where “supranational” is used to describe an intergovernmental or international regime developing the characteristics of a consolidated state. The influential statesman Robert Schuman seems to have coined this particular usage, describing European treaty organizations (such as the Coal and Steel Union) as supranational rather than merely international. See Robert Schuman, *France and Europe*, 31 FOREIGN AFF. 349 (1953); see also Josef L. Kunz, *Supra-National Organs*, 46 AM. J. INT’L L. 690 (1952) (expanding on the concept).
 13. See *supra* note 8 and accompanying text (discussing Kant and democratic peace theory). For an overview of Kantianism in international relations, see Patrick Capps & Julian Rivers, *Kant’s Concept of International Law*, 16 LEGAL THEORY 229 (2010); and Andrew Hurrell, *Kant and the Kantian Paradigm in International Relations*, 16 REV. INT’L STUD. 183 (1990), which provide excellent analyses of Kant’s views on international law. Kantian theory is frequently drawn on in discussions of both supranational and international legal ordering. See *supra* note 12 and accompanying text (explaining the distinction between supranational and

This Essay reexamines Hobbes's views on international order. It takes as its starting point the view developed in recent historical scholarship that the use of "Hobbesian" as a synonym for "realist" is a distortion. This view, however, has yet to make its way fully into the international-relations literature, not to mention international legal scholarship.¹⁴ As the preeminent Hobbes scholar Noel Malcolm has put it: "[T]he interpretation of Hobbes put forward by modern international relations theorists . . . has become fixed and ossified, functioning at best as an 'ideal type' and at worst as a caricature."¹⁵ By contrast, intellectual historians have recently offered more scrupulous accounts of Hobbes. Along with his criticism of contemporary international relations theorists, Malcolm has reconstructed Hobbes's views on international law and interstate relations, emphasizing their complexity and subtlety.¹⁶ Richard Tuck has offered a sustained examination of the political theory of international relations, prominently including Hobbes's work, convincingly identifying its influence on later authors in the social-contract tradition such as Jean-Jacques Rousseau and Kant.¹⁷ As part of a recent history of international thought, David Armitage has sought to explain the twentieth-century caricature of Hobbesian realism in light of Hobbes's commitment to several distinct and seemingly unreconciled theses on international order.¹⁸ And in a forthcoming

international law). For accounts of supranational law in Europe as allegedly reflecting a "Kantian" orientation, see, for example Pavlos Eleftheriadis, *The Idea of a European Constitution*, 27 OXFORD J. LEGAL STUD. 1 (2007); and Alec Stone Sweet, *A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe*, 1 GLOBAL CONSTITUTIONALISM 53 (2012).

14. An important exception here is Michael Williams, who is one of the few contributors to the international relations literature to take account of the recent trend in historical scholarship on Hobbes. See Michael C. Williams, *Hobbes and International Relations: A Reconsideration*, 50 INT'L ORG. 213 (1996); see also WILLIAMS, *supra* note 3, at 19-51.
15. NOEL MALCOLM, *Hobbes's Theory of International Relations*, in ASPECTS OF HOBBS 432, 433 (2002). In this excellent essay, Malcolm analyzes and repudiates the most common misreadings and caricatures that accompany many discussions of Hobbes in the international relations literature. For a criticism of this historical reassessment, see Glen Newey, *Leviathan and Liberal Moralism in International Theory*, in INTERNATIONAL POLITICAL THEORY AFTER HOBBS, *supra* note 10, at 56, 56-77, which argues that Hobbes should be understood in a realist vein despite the recent historiography suggesting otherwise.
16. MALCOLM, *supra* note 15.
17. RICHARD TUCK, *THE RIGHTS OF WAR AND PEACE: POLITICAL THOUGHT AND THE INTERNATIONAL ORDER FROM GROTIUS TO KANT* 109-39 (1999).
18. DAVID ARMITAGE, *FOUNDATIONS OF MODERN INTERNATIONAL THOUGHT* 59-74 (2013). Armitage argues that two strands of thought concerning international order were present, but not necessarily reconciled, in Hobbes's writings, with continuing consequences for the reception of Hobbes in international theory. The first strand was the claim that "the law of nations was simply the law of nature applied to commonwealths" and the second was that "the international realm is a state of nature populated by fearful and competitive actors." *Id.*

volume on the history of “perpetual peace” discourses both before and after Kant, Béla Kapossy, Isaac Nakhimovsky, Richard Whatmore, and others show that the question of how to achieve a pacific order among potentially bellicose modern states was central to eighteenth-century political thought and was developed partly in response to Hobbesian theory.¹⁹ None of these scholars accept the caricature of Hobbes as the founding father of international realism, and further work in this vein will surely consolidate a more sophisticated historical understanding of Hobbes and of post-Hobbesian political thought.

The Hobbesian caricature matters not only because the widely peddled distortion makes Hobbes’s actual understanding of international relations more difficult to discern but because that understanding is distinctive, provocative, and deserving of serious consideration. Elaborating Hobbes’s account of international order will accomplish more than just clarifying his views;²⁰ it should also contribute to ongoing reorientations across several scholarly disciplines. Most importantly for legal scholarship, a genuinely Hobbesian approach to international relations offers a compelling way to reconsider the foundations, governing principles, and expectations of modern international law. The scholarship on international law was transformed by an interdisciplinary opening to international relations theory in the 1990s,²¹ and one may hope that the new dialogue between international relations and international political theory will prove fruitful for scholarship on international law as well.²² For example, recent historical work has revealed the conceptual debt owed to Hobbes by others in the social-contract tradition, including Kant,

at 67. Armitage describes how the failure systematically to reconcile these views led to Hobbes’s identification in the twentieth century “as the classic theorist of international anarchy.” *Id.*

19. COMMERCE AND PERPETUAL PEACE IN ENLIGHTENMENT THOUGHT (Béla Kapossy et al. eds., forthcoming 2016).
20. Because this understanding is more often implied than expressly stated in Hobbes’s work, any attempt to elaborate a genuinely Hobbesian theory of international relations requires some inferential reconstruction, though there is enough evidence of his thinking on this subject to make such a project feasible.
21. For a discussion of the contemporary international relations-international law dialogue soon after it began in earnest, see Anne-Marie Slaughter et al., *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT’L L. 367 (1998). For a recent assessment of the progress made in this interdisciplinary reorientation over the past decades, see Adam Irish et al., *Bridging the International Law-International Relations Divide: Taking Stock of Progress*, 41 GA. J. INT’L & COMP. L. 357 (2013).
22. The reassessment of Hobbes in international political theory and the history of political thought has recently begun to influence international relations theory, since Hobbes is a foundational figure in both political and international theory. For a discussion of the problem in a recent collection of papers by scholars working across this divide, see INTERNATIONAL POLITICAL THEORY AFTER HOBBS, *supra* note 10.

to whom he has been conventionally opposed in the stylization of international relations theory.²³ This historical reassessment bolsters efforts to reduce the distance between realism and its alternatives in international relations theory, which should reorient the legal scholarship that has adopted these categories.²⁴

Any elaboration of Hobbes's theory of international order requires coming to terms with a central problem that has prompted centuries of reflection on the relations among modern states. The source of this problem is the "domestic analogy,"²⁵ an analytic maneuver of enduring influence that draws a parallel between the relations of persons in the state of nature and those of states in international anarchy. An overemphasis on the domestic analogy has contributed greatly to the misreading of Hobbes and may help to explain why even repeated historical critiques have not prevailed against the caricature of his thought.

The domestic analogy asserts a fundamental parallel between individuals and states, and hence between interpersonal and international relations.²⁶ Hedley Bull, the leading theorist of the "rationalist" school of international relations, first brought the domestic analogy into general academic discussion.²⁷ In Bull's words, it is "the argument from the experience of individual men in domestic society to the experience of states, according to which states, like individuals, are capable of orderly social life only if, as in Hobbes's phrase, they stand in awe of a common power."²⁸ In Hobbes's own presentation, importantly, the parallel between individuals and states is only partly drawn. While he asserts the similarity of individuals and states in the state of nature, Hobbes never claims that the way to avoid international conflict is to establish a coercive agent capable of serving as a "common power" at the

23. Howard Williams, *Kantian Perspectives on Intervention: Transcending Rather than Rejecting Hobbes*, in *INTERNATIONAL POLITICAL THEORY AFTER HOBBS*, *supra* note 10, at 102, 108; see *infra* Part V (further discussing Kant).

24. See Jeffrey W. Legro & Andrew Moravcsik, *Is Anybody Still a Realist?*, 24 *INT'L SECURITY* 5 (1999) (offering a reformulated account of "realism" that incorporates aspects of the contending approaches of liberalism, institutionalism, and epistemic theory); see also Peter D. Feaver et al., *Brother, Can You Spare a Paradigm? (Or Was Anybody Ever a Realist?)*, 25 *INT'L SECURITY* 165 (2000) (rebutting and responding to Jeffrey Legro and Andrew Moravcsik).

25. HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* 46-51 (1977) (discussing and analyzing the domestic analogy).

26. *Id.* For an analysis of the domestic analogy's component elements, see BOTTICI, *supra* note 5, at 26-29.

27. See BOTTICI, *supra* note 5, at 12-15 (discussing the first use of the term "domestic analogy" by Charles Manning and the "English School" of international relations, later popularized by Bull).

28. BULL, *supra* note 25, at 46.

international level. "In the case of Hobbes himself and his successors," Bull explains, "the domestic analogy takes the form simply of the assertion that states or sovereign princes, like individual men who live without government, are in a state of nature which is a state of war."²⁹ As Bull recognizes, Hobbes did not argue that an international social contract, analogous to the domestic social contract, "either should or can take place."³⁰

Nonetheless, many readers of Hobbes have taken just that step.³¹ Convinced by the power of the analogy between persons and states as they exist in conditions of anarchy, readers have postulated the necessity of a "social contract among states"³² in order to achieve international order, and they have assumed that its absence means the continuation of an international state of war.³³ Indeed, schemes that suppose world government to be the solution to conflict among modern states go back to some of the earliest readers of Hobbes.³⁴ In the twentieth century, the experience of the two world wars and the threat of nuclear devastation during the Cold War made many thinkers favorable to schemes of world government on the grounds that the system of sovereign states had become outmoded and dangerous.³⁵ Proposals for reform

29. *Id.*

30. *Id.*; see also ARMITAGE, *supra* note 18, at 67 (discussing the lack of an international Leviathan in Hobbes's theory).

31. BULL, *supra* note 25, at 46.

32. *Id.*

33. For an analysis of how the domestic analogy has been used by theorists and statesmen to justify schemes of world government, see HIDEKI SUGANAMI, *THE DOMESTIC ANALOGY AND WORLD ORDER PROPOSALS* 129-35 (1989), which comments on midcentury authors and statesmen, including Grenville Clark, Louis Sohn, Walter Schiffer, Frederick Schuman, and Cord Meyer, who proposed a world state on the basis of the domestic analogy. For more recent examples from international relations scholars, see Timo Airaksinen, *The Whiteness of the Whale*, in *HOBBS: WAR AMONG NATIONS* 51, 68 (Timo Airaksinen & Martin A. Bertman eds., 1989), which argues that "a world government is justified . . . exactly in the same way as the domestic sovereign power is justified . . . We need an unlimited contract, one that covers all countries and peoples and creates one super-state"; Tommy L. Lott, *Hobbes on International Relations*, in *HOBBS: WAR AMONG NATIONS*, *supra*, at 91, 97, which argues that "according to Hobbes's political principles, international sovereignty by conquest could eventually produce a world government"; and Alexander Wendt, *Why a World State Is Inevitable*, 9 *EUR. J. INT'L REL.* 491 (2003), which offers a "teleological" account of the transition to world government. See also *infra* notes 34-39 and accompanying text.

34. See *infra* notes 208-211 and accompanying text (discussing the French philosopher Abbé de Saint-Pierre, who proposed a pan-European monarchy for the sake of peace); see also BOTTICI, *supra* note 5, at 2-3, 80 (discussing Saint-Pierre, Henri de Saint-Simon, and others who used the domestic analogy to argue for a global authority above sovereign states).

35. See *supra* note 5 and accompanying text.

centered on models of “world federation,”³⁶ or an ambitiously expanded role for international law in the hope of achieving “peace through law,” as Hans Kelsen put it.³⁷

Importantly, this interpretation of the domestic analogy did not remain in the realm of theoretical speculation alone. The postwar burst of international institution building, which led to the United Nations and other international organizations, should be understood as reflecting a theoretical orientation in international legal liberalism toward world federalism.³⁸ The project of postwar European unification was justified on similar grounds.³⁹ The end of the Cold War brought another period of international lawmaking focused on global economic liberalization, visible in the formation of the World Trade Organization,⁴⁰ the North American Free Trade Area,⁴¹ and the Maastricht Treaty creating the European Union and the Euro currency,⁴² along with new attention to international human rights and new justifications for international

36. For a lengthy analysis of the world-federalism movement, and a collection of many of its historical documents, see JOSEPH PRESTON BARATTA, *THE POLITICS OF WORLD FEDERATION: FROM WORLD FEDERALISM TO GLOBAL GOVERNANCE* (2004).

37. HANS KELSEN, *PEACE THROUGH LAW* (1944); see also JOCHEN VON BERNSTORFF, *THE PUBLIC INTERNATIONAL LAW THEORY OF HANS KELSEN 191-212* (2014) (discussing Kelsen’s support for an expanded international judiciary and compulsory jurisdiction as a way to peace).

38. See SUGANAMI, *supra* note 33, at 79-128 (discussing the use of the domestic analogy in the justification for the creation of the United Nations, following the collapse of the League of Nations). For an analysis of the United Nation’s peacekeeping functions, see N.D. WHITE, *THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* (1990); for a history of world federalism in the postwar period, see BARATTA, *supra* note 36.

39. For a discussion of supranational institution building as representing a more ambitious project than traditional international law, see *supra* note 12 and accompanying text; and *infra* text accompanying notes 44-47. For justifications of the European Union along these lines, see Eleftheriadis, *supra* note 13, at 1-2; and Stone Sweet, *supra* note 13, at 53-55.

40. For the Marrakesh agreement establishing the World Trade Organization, see Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, https://www.wto.org/english/docs_e/legal_e/04-wto.pdf [<https://perma.cc/T6TU-C8ZY>]. For a discussion of the reordering of sovereignty represented in the WTO and similar processes of economic globalization, see JOHN H. JACKSON, *SOVEREIGNTY, THE WTO, AND CHANGING FUNDAMENTALS OF INTERNATIONAL LAW* 57-78 (2006).

41. For the North American Free Trade Treaty text, see North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 289 (1993), [http://www.italaw.com/sites/default/files/laws/italaw6187\(6\).pdf](http://www.italaw.com/sites/default/files/laws/italaw6187(6).pdf) [<http://perma.cc/K2Q8-RCCD>]. For a discussion, see Bruce Ackerman & David Golove, *Is NAFTA Constitutional?*, 108 HARV. L. REV. 799 (1995).

42. For the Maastricht Treaty text, see Treaty on European Union (Treaty of Maastricht), Feb. 7, 1992, 1992 O.J. (C 191) 1, http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf [<http://perma.cc/D3XE-E7SY>]. For a recent, critical discussion of European integration following monetary union, see Wolfgang Streeck, *Heller, Schmitt and the Euro*, 21 EUR. L.J. 361 (2015).

humanitarian intervention.⁴³ These new forms of global governance were often analyzed as steps on the path to global or cosmopolitan democracy,⁴⁴ a “post-national” political regime,⁴⁵ or similar conceptions of a global polity⁴⁶ or transnational political order.⁴⁷ The domestic analogy has continued to provide the background framing for these proposals, which are predicated on the idea that the deficiencies of the system of sovereign states, including but not limited to their potentiality for violence,⁴⁸ must be corrected by forms of global governance.⁴⁹

Yet while much has been made of the domestic analogy theoretically and institutionally, it remains something of a puzzle in Hobbes’s own thought. The analogy is closely identified with him, and for good reason: his theory of the formation of civil order, to which he was deeply committed, provided its foundation. Indeed, Hobbes repeatedly advanced the parallel between natural individuals and states, describing the international order as anarchic, just as he did the state of nature in civil society before the institution of political sovereignty.⁵⁰ The idea of a global sovereign as the solution to interstate conflict thus seems to be secreted in the very logic of his argument. Yet where

43. See, e.g., SAM MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 176–211 (2010); see also Jeff L. Holzgrefe, *The Humanitarian Intervention Debate*, in *HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS* 15, 15 (Jeff L. Holzgrefe & Robert O. Keohane eds., 2003); *infra* text accompanying notes 231–238.

44. See, e.g., DANIELE ARCHIBUGI & DAVID HELD, *COSMOPOLITAN DEMOCRACY: AN AGENDA FOR A NEW WORLD ORDER* (1995); DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER* 267–83 (1995); OTFRIED HÖFFE, *DEMOCRACY IN AN AGE OF GLOBALISATION* 187–247 (2007); Robert Goodin, *Global Democracy: In the Beginning*, 2 *INT’L THEORY* 175 (2010). For a criticism of schemes of global democracy through an analysis of the role the domestic analogy plays in them, see Heikki Potomaki, *Democratizing Global Governance*, in *CRITICIZING GLOBAL GOVERNANCE* 103, 103–24 (Markus Lederer & Philipp S. Muller eds., 2005).

45. See, e.g., JURGEN HABERMAS, *THE POSTNATIONAL CONSTELLATION* (2001).

46. See, e.g., MORTEN OUGAARD & RICHARD HIGGOTT, *TOWARDS A GLOBAL POLITY* (2002).

47. See, e.g., JAMES ANDERSON, *TRANSNATIONAL DEMOCRACY* (2002); JAMES BOHMAN, *DEMOCRACY ACROSS BORDERS* (2007). For a collection of essays on the European experience in this vein, see MICHAEL TH. GREVEN & LOUIS W. PAULY, *DEMOCRACY BEYOND THE STATE?* (2000).

48. In addition to the need to control violence, schemes of global governance are frequently proposed to correct other deficiencies of the system of sovereign states, including especially underinvestment in global public goods and other harms that result from international competition.

49. Not all schemes of global governance are necessarily sovereignty trumping at the international level; where they simply promote cooperation among sovereign states, they do not rely on the domestic analogy to justify an overarching authority above individual states. See *infra* text accompanying note 235.

50. See *infra* Section I.B.

one would expect to find this proposal, one finds instead a lacuna. Indeed, Hobbes was so far from endorsing a global sovereign that he never addressed the topic of interstate conflict at length, and he famously took civil war as his paradigm for war.

Given the logic of Hobbes's most emblematic argument and the lacuna in his account of international affairs, scholars are presented with a dilemma. They must either extend his argument beyond where he took it, thus departing from a genuinely Hobbesian account, or they must find some way of explaining the lacuna. Many scholars, especially those more interested in theorizing international relations than in reconstructing Hobbes's thought, have taken the first option. They have postulated, on purportedly Hobbesian terms, the necessity of a global sovereign (or a functional analogue thereto) as the solution to interstate conflict.⁵¹ As discussed above, these ideas have not remained restricted to academic settings but have been extremely influential in international lawmaking and policymaking.⁵²

Others, most prominently Bull, have taken the second option, seeking to explain why Hobbes did not suppose that the analogy between persons and states held completely. According to Bull, the reason why Hobbes did not endorse a complete version of the domestic analogy was that states do not suffer the same threats to their security as natural persons.⁵³ States and persons are different kinds of agents; in particular, Hobbes thought, states do not pose as profound a risk to other states as individuals do to each other in the state of nature, and so they do not engender the same belligerence.⁵⁴

The first approach to the puzzle of the domestic analogy essentially wishes it away: Hobbes's failure to espouse a global sovereign is left unexplained.⁵⁵

51. As Bottici notes:

It has been said several times that if Hobbes had stuck by the premises of his argumentation, he should have recognised that states are subject to the same pressure that drives individuals to exit the state of nature, as a result of which they should draw up a covenant between themselves to submit to a world government.

BOTTICI, *supra* note 5, at 46; see ARMITAGE, *supra* note 18, at 59-60, 72; sources cited *supra* note 33.

52. See *supra* text accompanying notes 38-43.

53. See, e.g., BULL, *supra* note 25, at 49; MALCOLM, *supra* note 15, at 435-36.

54. See Newey, *supra* note 15, at 67-69, for a variation on this theme, suggesting that it is the obvious inequality in state capacities that prevents states from acting in fearful preemption, despite the circumstances of international anarchy. This argument is similar to that advanced earlier by BEITZ, *supra* note 1, at 36.

55. Scholars taking this approach sometimes do forward arguments extrinsic to Hobbes's theory as to why he refused a global Leviathan, such as identifying alleged historical

The second approach takes the puzzle seriously, and Bull's explanation in particular has been highly influential. Indeed, it has become a central tenet of the rationalist school of international relations and informs many of the most faithful and sensitive accounts of Hobbes on international order.⁵⁶

The interpretation of Hobbes presented in this Essay is compatible with this rationalist approach, but it seeks to accommodate features of Hobbes's thought that Bull and those who follow him have left unexplored.⁵⁷ Most significantly, the rationalist interpretation does not engage the radical or utopian qualities of Hobbes's project—in particular Hobbes's claim that he had discovered the “royal road to peace.”⁵⁸ As a result, rationalists may fail to appreciate fully why, in Hobbes's view, the behavior of persons and states in anarchy must differ, resulting in a dangerous state of war in the one case but not the other. The effects of international anarchy are moderated, as Bull notes, because states and persons are different kinds of agents, but one reason for this difference is that the persons who compose a well-functioning state are

circumstances that led him to develop his theory without a role for a global state. For a discussion and critique of these views, see *infra* Part III.

56. See Williams, *supra* note 14, at 227-29 (discussing Bull's interpretation). For other explanations of why Hobbes did not use the domestic analogy to advocate for world government, see Francis Cheneval, *The Hobbesian Case for Multilateralism*, 13 SWISS POL. SCI. REV. 309, 310 (2007), which reconstructs the Hobbesian theory of international relations eschewing both anarchy and the world-state approach; and Nancy A. Stanlick, *A Hobbesian View of International Sovereignty*, 37 J. SOC. PHIL. 552, 562 (2006), which argues that “the concept of an international sovereign undermines the basic principle upon which Hobbes's entire moral and political theory rests: the preservation of life.” An earlier effort along these lines appears in Donald W. Hanson, *Thomas Hobbes's “Highway to Peace,”* 38 INT'L ORG. 329, 348-53 (1984), which emphasizes the reeducation of the passions within domestic society so as to produce peaceful external relations and rejects the account of “realism.”
57. For example, Chiara Bottici provides the best historical overview of the use of the domestic analogy in international political theory and follows broadly the rationalist reading of Hobbes on the domestic analogy; she accordingly deemphasizes the radical nature of the domestic transformation within the state. BOTTICI, *supra* note 5, at 47-50 (arguing that states in Hobbesian theory are not subject to the same security concerns as natural individuals, and hence less prone to violence); *cf. id.* at 41-42 (discussing Hobbesian domestic political theory while emphasizing representation and deemphasizing its democratic or transformative character). For a more radical reading of Hobbesian political theory, see *infra* Section I.A and Part IV.
58. HOBBS, DE CIVE, *supra* note 2, at 10. This theme is also present in Hobbes's two other major political works, which I will discuss together with *De Cive* in this article. THOMAS HOBBS, HUMAN NATURE AND DE CORPORE POLITICO (J.C.A. Gaskin ed., Oxford Univ. Press 1994) (1650) [hereinafter HOBBS, ELEMENTS OF LAW]; THOMAS HOBBS, LEVIATHAN (Richard Tuck ed., Cambridge Univ. Press 1996) (1651) [hereinafter HOBBS, LEVIATHAN]; see also Hanson, *supra* note 56, at 333-35, 348 (emphasizing the need to account for the centrality of the “highway to peace” in Hobbes's thought in both domestic and international relations); *supra* note 5 and accompanying text (same).

markedly different from those in a state of nature in ways that conduce to international peace.

On this view, Hobbes should be understood, like Kant, as a theorist of international peace. He believed that sovereign states were more secure than natural individuals, and therefore less belligerent. But he had a deeper reason for refusing to countenance a global sovereign: the solution to interstate conflict was already embedded in his account of civil sovereignty. On Hobbes's understanding of the political transformation engendered by the establishment of civil sovereignty, the solution to disorder at the international level was already available, and it was not analogous but identical to the solution to domestic disorder. Both domestic and international disorder would be addressed in a single step: the establishment of the "well-ordered commonwealth."⁵⁹

In the well-ordered commonwealth, Hobbes believed, the passions of the citizenry would be transformed, and he expected that a world composed of such states would be a peaceful one.⁶⁰ The establishment of sovereignty solves the problem of epistemic uncertainty and the interpersonal conflict it engenders, but it also alters the domestic calculations that lead to interstate conflict in the first place. It can thus put an end to conflict not just among persons but also among sovereigns, at least similarly situated ones, which explains why Hobbes used the domestic analogy to describe the problem of international disorder, but never claimed that a global sovereign would be its solution.

Hobbes thus did advance a theory of international order, but he did not analyze the international sphere as a distinct domain with its own dynamics. Instead, he saw interstate relations as dependent on the character of the domestic regimes within individual states. This account puts Hobbes close to today's constructivist scholars in international relations, who regard the interplay of "identity and interest" as central to international politics.⁶¹ Like these constructivists, Hobbes believed that states without a common sovereign do face an epistemic problem, but unlike many constructivists, he would not have thought that the creation of transnational ideologies or "epistemic communities" would overcome the problems of anarchy among states without a political transformation of domestic society.⁶² Rather, Hobbes seems to have

59. See *infra* Section I.A for further discussion of this concept.

60. See *infra* Section IV.A for Hobbes's analysis of the passions.

61. See, e.g., Wendt, *supra* note 5.

62. See, e.g., Peter M. Haas, *Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control*, 43 INT'L ORG. 377 (1989) (describing the construction of epistemic regimes); Peter M. Haas, *When Does Power Listen to Truth?*, 11 J. EUR. PUB. POL'Y 569

supposed that in a world of domestic fear and uncertainty, the state of nature would also obtain in the relations among states, but that in a world of well-ordered commonwealths, foreign wars would cease to be necessary or advantageous.

Hobbes's provocative thought, then, was that the kind of state that can secure genuine peace within its borders is unlikely to make aggressive war outside of them. By contrast, the argument that a world-state is inevitable as the solution to interstate strife—recently revived by leading constructivist scholar Alexander Wendt in a “teleological theory of the ‘logic of anarchy’”⁶³—reveals the presupposition, even among some constructivists, that a “Hobbesian” world of insecurity among states can be solved only through a global extension of Hobbes's domestic political solution. On the account I offer here, Hobbes may be regarded as an even more thoroughgoing constructivist than such contemporary scholars, for he considered a world-state superfluous in a world of properly constructed states.

This interpretation of Hobbes also puts him closer to what has been deemed the “Kantian” position in international thought, and indeed closer to liberalism more generally.⁶⁴ Hobbes advances the construction of a particular kind of state as the solution to international conflict: the well-ordered commonwealth. Similarly, according to Kant, the solution to both domestic and international disorder is through the establishment of a world of sovereign republics capable of making and following law, including international law.⁶⁵ In both Kant and Hobbes, then, we find the argument that a transformation of politics at the domestic level would provide a sufficient basis for the achievement of a peaceful international order—and that the logic of the social contract would not need to be transposed to the global level to achieve it.

One aim in excavating these dimensions of Hobbes's thought—showing him to be more “Kantian” than “Hobbesian,” more “constructivist” than

(2004); see also WILLIAMS, *supra* note 3, at 49–51 (emphasizing that Hobbes focused on the willed construction of social order and was skeptical of the nonpolitical diffusion of social norms as a form of governance).

63. Wendt, *supra* note 33, at 491.

64. See Moravcsik, *supra* note 9, at 518–21 (emphasizing the way in which interstate behavior depends on domestic preferences channeled into foreign policy but insisting on an “anti-utopian” interpretation of this connection); Newey, *supra* note 15, at 56–57 (noting the ascription to Hobbes of all the major theories of international relations, including realism, rationalism, liberalism, and constructivism).

65. Kant is another figure whose interpretation in the international-relations literature is various and controverted. See Capps & Rivers, *supra* note 13, at 229–32 (discussing Kant's emphasis on a system of sovereign republics as necessary for international law); see also Bottici, *supra* note 8 (analyzing the domestic analogy in Kant's work). For further discussion of Kant, see *infra* Part V.

“realist”—is to put pressure on these conventional demarcations, thereby revealing some deep and neglected continuities in modern international thought. It suggests as well an ongoing commitment in the social-contract tradition to developing a “peace theory.”⁶⁶ For Hobbes, the building blocks are well-ordered commonwealths; for Kant, properly constructed republics. But both theorized a pacific international order developing through domestic political transformations. Modern scholars have largely failed to follow the links Hobbes drew between the institution of civil sovereignty and the achievement of international peace, or to note the parallels between Hobbes’s analysis and the later Kantian elaboration of the same connection.⁶⁷

Reviewing these theoretical foundations should lead legal scholars to reassess the foundations of international order. What I call the “realist-utopian” approach,⁶⁸ drawing on both Hobbes’s starting point of a dangerously anarchic world and his hope for radical political transformation, offers a way to reconsider the foundations, governing principles, and expectations of modern international law. While such a broad theoretical framework cannot provide specific policy recommendations, it does illuminate the ways in which the changing dynamics of sovereignty are implicated in contemporary problems of international law and politics, including the role of human rights in the legitimation of the international legal order and the dynamics of international economic integration. Reassessing Hobbes’s analysis of the domestic analogy should thus prompt a rethinking of our own views on international order in an era of intensifying cross-border relations.

In Part I of this Essay, I present Hobbes’s argument concerning the creation of political order, both domestic and international. Discussing the “well-ordered commonwealth” at the heart of Hobbes’s political theory, I consider how an “instituted” commonwealth differs from other hierarchies of command that Hobbes analyzed. I also examine his usually neglected argument that the original form of an instituted commonwealth is a democracy. From this overview of Hobbes on domestic order, I turn to the problem of international order, examining the textual foundations of the domestic analogy in Hobbes’s writings.

66. See *supra* note 8 and accompanying text (discussing contemporary “peace theories” as revived in discussions of a “democratic” or “liberal peace”); see also ELAINE SCARRY, THERMONUCLEAR MONARCHY: CHOOSING BETWEEN DEMOCRACY AND DOOM 157–88 (2014) (emphasizing peace as the ultimate aim of social-contract theories, including prominently Hobbes’s theory).

67. Again, the historians of political thought discussed above prove exceptions to this general failing, as do scholars working with those historians’ research in mind. See *supra* notes 14–19, 22 and accompanying text.

68. See *infra* text accompanying notes 188–197.

In Part II, I consider the puzzle posed by the domestic analogy, noting Hobbes's failure to espouse an international extension of the domestic solution to anarchy in the form of a world-state. Hobbes rejected this extension, I argue in Part III, because he believed that the institution of civil sovereignty would provide the solution to both domestic and international anarchy; the solution to international and domestic disorder is not an analogy but an identity. Understanding how this can be requires recognizing that Hobbes believed the achievement of a well-ordered commonwealth would alter the passions of the commonwealth's citizens, which would in turn alter the commonwealth's behavior toward other states.

This psychological dimension of Hobbes's theory is explored in greater detail in Part IV. Characterizing Hobbes's politics as "realist-utopian," I reconstruct Hobbes's account of the transformation of the passions in domestic society. Far from an idiosyncratic concern of Hobbes, I show in Part V that the social-contract tradition has been centrally concerned with the problem of international peace by examining Hobbes's influence on later authors, including Rousseau, Kant, and John Rawls. I close in Part VI by considering several current problems of international law and governance in the realist-utopian frame, including international humanitarian intervention and economic integration.

I. THE PROBLEM OF DOMESTIC AND INTERNATIONAL ORDER

Hobbes has been known since his own time as a theorist of social disorder and its solution. He famously argued that individuals overcome the dangerous anarchy of the state of nature by constructing a civil sovereign. Although his argument changed slightly in his later works, particularly on the question of whether the civil sovereign has the authority to interpret scripture,⁶⁹ the broad outlines of this argument remained consistent throughout his long life. However, as I describe in Section I.A, many of the details of his political theory are less well known, such as his often overlooked commitment to a democratic account of sovereignty. Hobbes's argument for the domestic social contract is what later authors have relied on in drawing the domestic analogy. As I explain in Section I.B, they have done so by using Hobbes's own writings, since he

69. On the complex question of Hobbes's religious views, see JEFFREY COLLINS, *THE ALLEGIANCE OF THOMAS HOBBS* (2007); Noel Malcolm, *General Introduction to HOBBS, LEVIATHAN*, *supra* note 58, at 1, 14-15; Richard Tuck, *The 'Christian Atheism' of Thomas Hobbes*, in *ATHEISM FROM THE REFORMATION TO THE ENLIGHTENMENT* 111, 111-30 (Michael Hunter & David Wootton eds., 1992); and Richard Tuck, *The Civil Religion of Thomas Hobbes*, in *POLITICAL DISCOURSE IN EARLY MODERN BRITAIN* 120, 120-38 (Nicholas Phillipson & Quentin Skinner eds., 1993) [hereinafter Tuck, *Civil Religion*].

used both interpersonal and international examples of anarchy in illustrating the state of nature.

A. Instituting the Commonwealth

Hobbes's political theory begins from the supposition of a "state of nature," a condition of man outside (before, or without) political society. In this condition, Hobbes claimed, "Nature has given *each man a right to all things*,"⁷⁰ but because this right is useless without the protection of civil laws, this universal grant is tantamount to giving no rights at all. "Outside the commonwealth every man has a right to all things, but on the terms that he may enjoy nothing."⁷¹ It is this circumstance that makes the state of nature one of constant conflict, the war "of every man, against every man."⁷² To escape from this condition, natural individuals covenant with one another to establish a civil order.

This much of Hobbes's thought is familiar, but less so is his argument concerning the causes of this condition. The mutual war that characterizes the state of nature is spurred not by any inherently aggressive or acquisitive aspects of human nature, but by mutual fear, which makes men arm themselves against one another and strike preemptively.⁷³ Such fear, which Hobbes defined as "*any anticipation of future evil*,"⁷⁴ is ultimately driven by an uncertainty about what constitutes a genuine interpersonal threat. As Tuck explains, "Hobbes's men are primarily fearful rather than aggressive creatures, who are led into conflict by their differing judgments about what will protect them."⁷⁵ Epistemic uncertainty conduces to fearful anticipation and to defensive preemption.

Hobbes's solution to this problem was the establishment of a sovereign with the power not only to suppress internal conflict but, more crucially, to solve the epistemic problem whereby each person is left "his own judge"⁷⁶ as to

70. HOBBS, *DE CIVE*, *supra* note 2, at 28.

71. *Id.* at 116.

72. HOBBS, *LEVIATHAN*, *supra* note 58, at 88.

73. RICHARD TUCK, HOBBS 58-59 (1989). For an analysis of the different ways in which Hobbes employs the state of nature, see IOANNIS D. EVRIGENIS, *IMAGES OF ANARCHY* (2014).

74. HOBBS, *DE CIVE*, *supra* note 2, at 25.

75. TUCK, *supra* note 17, at 132.

76. See HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 180 (describing the "state of nature" as one in which conflicts arise due to this epistemic uncertainty). Richard Tuck cites this passage as a concise summary of Hobbes's views on the transition from the state of nature to civil society. TUCK, *supra* note 73, at 57-58.

what constitutes a threat. Hobbes argued that the instability of the state of nature drives individuals to seek civil society by transferring to the political community their natural liberty to judge threats. This loss of natural liberty is compensated by the gain of liberty that is usable within society. As Hobbes put it in *Leviathan*, “Feare of oppression, disposeth a man to anticipate, or to seek ayd by society: for there is no other way by which a man can secure his life and liberty.”⁷⁷ It is a necessary consequence of coexistence that life in society requires collective restraints on natural liberty.⁷⁸

The kind of state that comes into being through this mutual covenanting among persons is what Hobbes defined as a “commonwealth by institution.” He often called this state simply a “commonwealth,” but sometimes a “well-ordered commonwealth,” to signal his commitment to the modern theory of state sovereignty following the lead of French jurist Jean Bodin.⁷⁹ The well-ordered or properly formed commonwealth comes about through “institution,” and Hobbes’s general analysis of commonwealth (or, the Latin *civitas*)⁸⁰ presupposed such an instituted republic, formed through common consent.

The illustrative contrast to the commonwealth by institution is a commonwealth established on the basis of natural inequality: either a commonwealth by acquisition (based on the master-slave relation) or a

77. HOBBS, *LEVIATHAN*, *supra* note 58, at 71-72.

78. As Hobbes explained:

The finall Cause, End, or Designe of men, (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Commonwealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent (as hath been shewn) to the naturall Passion of men, when there is no visible Power to keep them in awe, and tye them by feare of punishment to the performance of their Covenants, and observation of those Lawes of Nature . . .

Id. at 117.

79. The focus of Jean Bodin’s foundational theory of sovereignty was the *république bien ordonnée*. JEAN BODIN, *LES SIX LIVRES DE LA REPUBLIQUE* [THE SIX BOOKS OF THE REPUBLIC] 474 (Paris, Chez Jacques Dupuy 1576). For Hobbes’s use of the term “wel ordered Common-wealth,” see HOBBS, *LEVIATHAN*, *supra* note 58, at 471. The term was later widely used, including by James Harrington and Rousseau. See JAMES HARRINGTON, ‘THE COMMONWEALTH OF OCEANA’ AND ‘A SYSTEM OF POLITICS’ 244 (J.G.A. Pocock ed., Cambridge Univ. Press 1992) (1656); JEAN-JACQUES ROUSSEAU, *Discourse on Political Economy*, in *THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS* 3, 159 (Victor Gourevitch ed. & trans., Cambridge Univ. Press 1997) (1755). Note that the terms “well-ordered” and “well-founded” commonwealth are sometimes used interchangeably in discussions of Hobbes’s political theory. See *infra* text accompanying note 184.

80. HOBBS, *DE CIVE*, *supra* note 2, at 73.

commonwealth by generation (based on parental authority).⁸¹ These routes to political order produce “despotic” or “paternal” dominion based on the authority of masters and parents respectively. Since generation presents a special case of acquisition—a child is born into the power of the mother, who may, in turn, be under the power of the child’s father—the real contrast Hobbes wished to draw was between commonwealths that are deliberately created among equals (that is, instituted) and those that are created by inequality (that is, acquired or generated). Hobbes’s claim that these social groupings founded on unequal interpersonal relations were “commonwealths” reflects a politicizing conceptualization of the constitutive relations of the ancient *oikos*, the master-slave and father-child relations that Aristotle had identified as natural prepolitical hierarchies.⁸²

By contrast, instituted commonwealths were argued to be not natural, but artificial, the deliberate product of construction by equals. According to Hobbes, what makes an instituted commonwealth well-ordered is that each of its members has, in “a quiet mind”⁸³ free from troubling passions, recognized its advantages and consented to its construction. The resulting political state is, initially, nothing more than a common procedure for settling any controversy. Significantly, that initial procedure is majority rule: the collective decision to allow the majority to substitute its judgment for the whole on contentious matters.⁸⁴

81. HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 107–08 (distinguishing among the three forms of commonwealth); *id.* at 126–29 (discussing the “Power of Masters” at greater length); *id.* at 130–35 (discussing the “Power of Fathers”). The same distinction (between the *civitas institutiva* and the *civitas naturalis*, also called the *civitas acquisita*) is found in HOBBS, *DE CIVE*, *supra* note 2, at 102. The Despotic and Patrimonial Kingdoms are discussed at further length in chapters VIII and IX respectively, and likewise in HOBBS, *LEVIATHAN*, *supra* note 58, at 138, where it is explained that choosing a sovereign from fear of one another produces a commonwealth by “institution” while, if from fear of some particular other, it is by “acquisition.”

82. ARISTOTLE, *POLITICS* bk. I, at 1–6 (C.D.C. Reeve trans., Hackett Publ’g Co. 2d ed. 1998) (c. 350 B.C.E.).

83. HOBBS, *DE CIVE*, *supra* note 2, at 53. Note that Michael Silverthorne and Tuck here translate the Latin “*sedatus animus*” as “calmer moments,” but it could also be rendered as “quiet mind” or “mind at rest.” This assumption of calm reflection revealing the necessity of political construction may be one of the most crucial in Hobbes’s analysis. Nonetheless, it remains unexplained why, absent the protection of existing political institutions, individuals in the state of nature should be expected to recognize quietly (if intermittently) the untenability of their collective circumstances, at least in any fashion coordinated enough to allow joint action to produce these institutions.

84. *Id.* at 72 (“The will of an Assembly is understood as the will of the greater part of the men who make up the assembly.”); *id.* at 94 (“When men have met to erect a commonwealth, they are, almost by the very fact that they have met, a Democracy . . . understood to be bound by the decisions made by agreement of the majority.”).

While Hobbes's role as the first theorist of modern democracy is usually neglected,⁸⁵ it is important to recognize that the founder of the social-contract tradition understood civil society to be a necessarily democratic construction.⁸⁶ It is true that Hobbes argued that the civil sovereignty instituted through democratic means could later be surrendered by the inactivity of the democratic sovereign,⁸⁷ or by deliberate (and democratic) transfer to a single ruler (monarchy) or the rule of a few (aristocracy).⁸⁸ Nevertheless, as far as Hobbes was concerned, the well-ordered commonwealth begins with the democratic institution of sovereign power and remains in some foundational sense the collective construction of its citizens, even in the nondemocratic forms it may later assume. It is, by contrast, the "natural" forms of commonwealth that do not pass through at least an initial phase of democratic rule.

B. The Domestic Analogy

Hobbes's political theory was expressly addressed to the problem of domestic order, and contains no extended discussion of international relations. Yet Hobbes was keenly aware of the problem of international disorder and frequently drew on international examples to illustrate elements of his broader political theory. In his "Preface to the Readers" in the 1647 edition of *De Cive*, Hobbes offered "a Principle well known to all men by experience and which everyone admits, that men's natural Disposition is such that if they are not restrained by fear of a common power, they will distrust and fear each other"

85. This neglect is probably due to the fact that Anglophone readers generally approach Hobbes through *Leviathan* rather than the earlier *De Cive* (which was the standard Hobbesian text on the Continent), which contains the clearest account of the democratic formation of the commonwealth.

86. As Tuck explains, "[W]hereas earlier writers (including Aristotle himself) had taken something like a mixed state to be paradigmatic, and had interpreted democracy as ideally a kind of mixed government, Hobbes took democracy to be paradigmatic, and ruthlessly interpreted all other forms (even monarchy) as like democracy." Richard Tuck, *Hobbes and Democracy*, in *RETHINKING THE FOUNDATIONS OF MODERN POLITICAL THOUGHT* 171, 185 (Annabel Brett & James Tully eds., 2006). For criticism of this view, see Kinch Hoekstra, *A Lion in the House: Hobbes and Democracy*, in *RETHINKING THE FOUNDATIONS OF MODERN POLITICAL THOUGHT*, *supra*, at 191, and for a fuller elaboration of this view, see chapter two of RICHARD TUCK, *THE SLEEPING SOVEREIGN* (forthcoming 2016). For a discussion of the ways in which Hobbes's arguments were taken up by republican figures in the later seventeenth century, contrary to the crude characterization of him as an apologist for despotism, see JON PARKIN, *TAMING THE LEVIATHAN* 78-79, 108-09 (Quentin Skinner & James Tully eds., 2010).

87. HOBBS, *DE CIVE*, *supra* note 2, at 94-95.

88. *Id.* at 95-96.

and defend themselves as they will.⁸⁹ To illustrate this conception of anarchy, Hobbes summoned first the example of latent conflict in international relations: "We see that all commonwealths, even if they are at peace with their neighbours, still defend their borders with garrisons of soldiers, their cities with walls, gates and guards."⁹⁰ Then he gave evidence from domestic society: "Even within commonwealths, where there are laws and penalties set against wrongdoers, individual citizens do not travel without a weapon to defend themselves or go to bed without barring their doors against their fellow citizens."⁹¹

Hobbes often used the problems of international and domestic disorder conjointly to illustrate the strife for which he counseled the creation of a civil sovereign. International affairs revealed the problem particularly clearly, as Hobbes explains in the following passage from *De Cive*:

For the state of commonwealths towards each other is a *natural* state, i.e. a state of hostility. Even when the fighting between them stops, it should not be called Peace, but an intermission during which each watches the motion and aspect of its enemy and gauges its security not on the basis of agreements but by the strength and designs of the adversary.⁹²

As with the interpersonal state of nature, Hobbes's claim was not that states are constantly making outright war—though that may be so—but that they are constantly subject to the threat of war, and consequently they must be engaged in preparations for it. This condition of constant fear and defensive preparation is the equivalent of war. With both states and natural persons, "the nature of War," Hobbes explained, "consisteth not in actuall fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary."⁹³

Having established the logic of anarchy, which obtains both internationally and interpersonally, Hobbes then considered the conduct that reason obliges of

89. *Id.* at 10.

90. *Id.*

91. *Id.*

92. *Id.* at 144-45. The insight that states may be implicitly at war, even during formal peace, is an old one. Thucydides discusses the Peace of Nicias (421-415 B.C.E.) as merely an intermission in war, not genuine peace. See G.E.M. DE STE. CROIX, *THE ORIGINS OF THE PELOPONNESIAN WAR* 50 (1972). Consider too the statement of Clinias in Plato's *Laws*: "[P]eace, as the term is commonly employed, is nothing more than a name, the truth being that every State is, by a law of nature, engaged perpetually in an informal war with every other State." 1 PLATO, *LAWS* 7 (T.E. Page et al. eds., R.G. Bury trans., William Heinemann 1926) (c. 348 B.C.E.).

93. HOBBS, *LEVIATHAN*, *supra* note 58, at 88-89.

states and persons (“natural law”), and which it permits to them for their defense (“natural right”):

[B]ecause commonwealths once instituted take on the personal qualities of men, what we call a *natural law* in speaking of the duties of individual men is called the *right of Nations*, when applied to whole commonwealths, peoples or nations. And the Elements of *natural law* and *natural right* which we have been teaching may, when transferred to whole *commonwealths* and *nations*, be regarded as the Elements of the *laws* and of the *right of Nations*.⁹⁴

This parallel between the rights and duties of individuals and the rights and duties of states is what twentieth-century theorists, notably Bull, later termed the “domestic analogy.”⁹⁵ It is important to be precise about what the analogy consists in, distinguishing it at the level of the problem and of the proposed solution. Malcolm explains, in a passage worth quoting at length:

[W]e are now in a better position to see what happens when people come together to form a commonwealth. When they authorize a sovereign to ‘bear their person’ and to legislate for them, their jural situation undergoes a radical change *vis-à-vis* their fellow-citizens; but their basic lack of jural duties to anyone outside the commonwealth remains the same. The only difference, where external relations are concerned, is that their relationship with outsiders is now managed for them by the sovereign: the sovereign decides when to go to war and when to make peace. The various commonwealths that exist in the world are in the same jural vacuum as individuals in the state of nature. At the jural level, therefore, the parallel between states and individuals holds precisely: each commonwealth is indeed like a giant person, acting with a universal freedom-right *vis-à-vis* other such persons in the state of nature.⁹⁶

This parallelism, which grounds the domestic analogy, is deeply embedded in Hobbes’s thought, and in social-contract theory more generally. Indeed, as Tuck has suggested, although we commonly suppose that the idea of an international state of nature builds analytically on the logic of interpersonal anarchy—supposing states to behave like natural individuals, for example, as Hobbes put it in the passage from *De Cive* cited above—the insight may

94. HOBBS, *DE CIVE*, *supra* note 2, at 156.

95. BULL, *supra* note 25, at 46, 49–51; *see also supra* notes 26–32 and accompanying text.

96. MALCOLM, *supra* note 15, at 446.

actually have been derived the other way.⁹⁷ In order to explain the creation of domestic civil societies, early modern philosophers looked first to the actual anarchy they saw prevailing among princes, and imagined that individuals in the state of nature must all have been so independent and potentially bellicose at one time. Thus reflection on domestic anarchy did not inspire philosophical accounts of international anarchy, but rather international anarchy framed the theory of domestic order.

A famous passage from *Leviathan* illustrates the possibility that Hobbes's own theory developed this way. After sketching the state of nature, Hobbes admitted: "It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now."⁹⁸ Hobbes goes on to suggest that "the savage people in many places in *America*"⁹⁹ may perhaps be understood as living in a prepolitical state. However, his best example—indeed, his only sure example—was the anarchy of states in the international sphere:

But though there had never been any time, wherein particular men were in a condition of warre one against another; yet in all times, Kings, and Persons of Sovereigne authority, because of their Independency, are in continuall jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers of their Kingdomes; and continuall Spyes upon their neighbours, which is a posture of War. But because they uphold thereby, the Industry of their Subjects; there does not follow from it, that misery, which accompanies the Liberty of particular men.¹⁰⁰

The idea of an interpersonal state of nature is thus as much a heuristic as an anthropological or historical assertion, a means of analyzing political obligation from the starting point of radical individual equality.¹⁰¹ It is perhaps most obvious in international relations, and yet, as the last line of the passage

97. See TUCK, *supra* note 17, at 226-27.

98. HOBBS, *LEVIATHAN*, *supra* note 58, at 89.

99. *Id.*; see Letter from François Peleau to Thomas Hobbes (Nov. 1, 1656), in 1 *THE CORRESPONDENCE OF THOMAS HOBBS, 1622-1659*, at 329, 331-32 (Noel Malcolm ed., 1994). See generally EVRIGENIS, *supra* note 73, at 139-50 (analyzing Hobbes's use of the state-of-nature framework across his major political works).

100. HOBBS, *LEVIATHAN*, *supra* note 58, at 90.

101. See EVRIGENIS, *supra* note 73, at 141 (discussing Hobbes's state of nature as a thought experiment).

indicates, the parallel between international and domestic disorder is not an exact one. Understanding Hobbes's approach to international order requires considering how far anarchy at the international level actually imperils the security of those living in well-ordered commonwealths and, in turn, how those living in such commonwealths may be expected to respond to such anarchy.

II. THE REFUSAL OF A GLOBAL LEVIATHAN

Hobbes's solution to the problem of civil disorder may seem to have left unresolved the problem of international anarchy, particularly if we follow him in recognizing not just an interpersonal state of nature but an international one. Yet since Hobbes did not advocate a world-state, the analogy between interpersonal and international anarchy would appear to hold only in the diagnosis of the problem rather than the solution. This creates a puzzle. How may we reconcile Hobbes's use of examples from both international and interpersonal conflict to illustrate the problem of anarchy with his apparent refusal to countenance at the international level the solution that he espoused at the domestic? To the extent that the interpersonal and the international states of nature are parallel, why do they not oblige an analogous solution, namely, the transferral of rights from individual states to a global sovereign authority?¹⁰²

As mentioned in the Introduction, scholars have taken one of two approaches to explain this puzzle: either they extend Hobbes's argument beyond where he himself took it, thus departing from a genuinely Hobbesian account in proposing a global Leviathan, or they find some way of explaining the lacuna consistent with Hobbes's theory. The first route is the most common in international relations and has motivated several scholarly volumes to examine whether, as Timo Airaksinen and Martin Bertman put it, "World Government is justified on Hobbesian principles."¹⁰³ While most scholars recognize that Hobbes did not support a global state, a common response nevertheless draws on his theory in extending the logic of anarchy from

102. As Williams puts it: "[W]hy, if Hobbes felt the solution to anarchy in the state of nature lay in the creation of the Leviathan, did he not extend the logic of this solution to the international level?" Williams, *supra* note 14, at 214.

103. Timo Airaksinen & Martin A. Bertman, *Introduction* to HOBBS: WAR AMONG NATIONS, *supra* note 33, at vii, viii. Incidentally, the contributors mostly answer that a world government is not justified on Hobbesian grounds, though a number of them do not really take up the issue directly. *Id.* at vii-ix; see also THE CAUSES OF QUARREL: ESSAYS ON PEACE, WAR, AND THOMAS HOBBS (Peter Caws ed., 1989) (discussing Hobbes on world government and drawing similarly negative conclusions).

domestic civil society to defend a global Leviathan.¹⁰⁴ Such an extension, however, raises the question of why Hobbes himself did not propose it. When this puzzle is addressed, the lacuna is often attributed to external obstacles that impinged on Hobbes's thinking but which do not reflect the "political realities of our time"¹⁰⁵: for example, that world government was not possible in the seventeenth century. But an updated Hobbesian analysis relevant to today, by contrast, is argued to countenance it: "what Hobbes considered inappropriate for his own time, world government, is now appropriate on essentially his basis for state formation: self-preservation."¹⁰⁶

This argument no doubt has its attractions, yet it suffers from a fatal problem. A global political order was in no way unimaginable to Hobbes, and yet he never indicated that it would be necessary to achieve international peace. The concept of a world-state was both logically obvious and historically available to any educated Western European of Hobbes's time. Logically, the idea was surely as plain to Hobbes as it is to his latter-day interpreters. The domestic analogy is not difficult to trace from parallel problem to parallel solution, and Hobbes was more than capable of completing it himself. Historically, the idea of a "world-state" had been around in one shape or another for about two millennia before Hobbes. Any student of Roman history would have been able to imagine the world ruled by a single *imperator*,¹⁰⁷ even leaving aside the more sophisticated renderings of a global legal order in Hellenistic and early Christian thought (as in theories of the *cosmo-polis* or the *oikoumene*).¹⁰⁸ Indeed, several late Roman emperors and medieval Popes had even claimed dominion over the entire globe (*dominium mundi*), albeit without much credibility, as Hobbes would have been fully aware.¹⁰⁹

Hobbes's lack of commitment to world government should not be ascribed to any failure to imagine it. He must thus have believed either that the

104. See *supra* notes 33, 51 and accompanying text.

105. Airaksinen & Bertman, *supra* note 103, at viii.

106. Martin A. Berman, *What Is Alive in Hobbes?*, in HOBBS: WAR AMONG NATIONS, *supra* note 33, at 1, 13.

107. The idea of a world-spanning empire was, of course, central to Roman imperial ideology, even in the Republican Period, as attested in the famous line from Virgil's *Aeneid* describing the divine grant of rule without limit to the Romans: *imperium sine fine dedi*. On the way in which this ideology was deployed practically in the management of the multicultural empire, see CLIFFORD ANDO, *IMPERIAL IDEOLOGY AND PROVINCIAL LOYALTY IN THE ROMAN EMPIRE* (2000).

108. On ancient "cosmopolitanism," see generally MALCOLM SCHOFIELD, *THE STOIC IDEA OF THE CITY* (1991).

109. See TUCK, *supra* note 17, at 58-63 (discussing briefly Roman and medieval Christian claims of *dominium mundi*).

condition of war among states was inescapable for some reason, as assumed in many realist readings of Hobbes, or that his theory already offered a solution to international conflict without resort to an overarching international authority. Both interpretations find some textual support; I develop the latter interpretation in the following Part, and critically examine the former for the remainder of this Part.

Perhaps most realist readings of Hobbes advance a version of the first view, assuming that Hobbes thought international war was permanent and inevitable. These arguments usually rely on a few passages in which Hobbes seems to describe international anarchy as a natural state, emphasizing that what appears to be peace among states is actually preparation for war. In addition to the passage from *Leviathan* to this effect discussed above,¹¹⁰ which establishes the domestic analogy at the level of the problem, the main passage cited to support this claim comes from a late work, *A Dialogue Between a Philosopher and a Student, of the Common Laws of England (Dialogue)*, in which Hobbes depicts a conversation between a philosopher representing broadly Hobbesian views and a lawyer with conventional and self-serving views.¹¹¹

The target throughout the *Dialogue* is the common law position, represented by Sir Edward Coke, whose *Institutes* are frequently cited and examined in the discussion on the nature of law and its relation to political sovereignty.¹¹² The passage in question comes from a discussion of the purpose of statutory law and is put into the mouth of the lawyer. It proves a minor interruption in the course of the philosopher's effort to lead the lawyer to comprehend that statutory law's ultimate authority lies in sovereign will. When the philosopher asks "[T]o what end were Statute-Laws ordained?" the lawyer answers with a pompous exposition on the unchangeable depravity of man and the necessity therefore of punitive laws.¹¹³ It is following this outburst that the philosopher asks, "What hope then is there of a constant Peace in any Nation, or between one Nation and another?" to which the lawyer answers that there is no hope for peace among nations.¹¹⁴ Because the first few lines of the

110. See *supra* text accompanying notes 98–100.

111. THOMAS HOBBS, *A Dialogue Between a Philosopher and a Student, of the Common Laws of England*, in WRITINGS ON COMMON LAW AND HEREDITARY RIGHT 1 (Alan Cromartie & Quentin Skinner eds., 2005) [hereinafter HOBBS, *A Dialogue*]; see sources cited *infra* note 126 (using this passage to support a "realist" reading of Hobbes on international relations).

112. Alan Cromartie, *General Introduction* to HOBBS, *A Dialogue*, *supra* note 111, at xxiii.

113. *Id.* at 11–12.

114. *Id.* at 12.

lawyer's response are frequently taken out of context to support a "realist" interpretation of Hobbes,¹¹⁵ it is worth reproducing it here in its entirety:

You are not to expect such a Peace between two Nations, because there is no Common Power in this World to punish their Injustice: mutual fear may keep them quiet for a time, but upon every visible advantage they will invade one another, and the most visible advantage is then, when the one Nation is obedient to their King, and the other not; but Peace at home may then be expected durable, when the common people shall be made to see the benefit they shall receive by their Obedience and Adhaesion to their own Sovereign, and the harm they must suffer by taking part with them, who by promises of Reformation, or change of Government deceive them. And this is properly to be done by Divines, and from Arguments not only from Reason, but also from the Holy Scripture.¹¹⁶

The philosopher does not then engage the lawyer on any of these points but instead turns back to the earlier subject, objecting that what the lawyer has said is "not very much to that I aim at by your Conversation" and inquiring again about the purpose of statutory law.¹¹⁷ The dialogue moves on to consider that question.

Does this brief interlude provide evidence of Hobbes's commitment to a realist understanding of interstate anarchy? There are several reasons to be cautious about relying too much on this passage in reconstructing Hobbes's views, particularly in preference to arguments from his earlier, canonical works. First, the interpretation of this passage is complicated by its being put into the mouth of the lawyer in the *Dialogue*. Hobbes disdained lawyers and was skeptical about their claims to special expertise, identifying law with the command of the sovereign rather than lawyerly constructions.¹¹⁸ Indeed, the central purpose of the *Dialogue* seems to have been to *undermine* the views represented by the common lawyer. Thus, while even the philosopher's statements in this dialogue cannot be assumed to be Hobbes's own, those of the lawyer should be viewed even more critically.

It is true that the lawyer initially repeats a point made in the passage from *Leviathan* cited above: that the international arena is anarchic, because it is

115. See *infra* note 126 and accompanying text.

116. HOBBS, *A Dialogue*, *supra* note 111, at 12.

117. *Id.*

118. On Hobbes's attack on lawyers and lawyerly reasoning, see Michael Lobban, *Thomas Hobbes and the Common Law*, in HOBBS AND THE LAW 39, 40 (David Dyzenhaus & Thomas Poole eds., 2012).

lacking a “Common Power,” and that what looks like peace is nothing but preparation for war.¹¹⁹ However, the lawyer’s statement lacks the further suggestion given in *Leviathan* that the effects of this anarchy will be moderated in the case of interstate relations because states are different kinds of agents than natural persons.¹²⁰ Indeed, the *Dialogue* does not examine the comparison between persons and states that the domestic analogy presupposes, and other central Hobbesian theoretical constructs (e.g., the state of nature) are also conspicuously missing from it.

Note, moreover, that the passage ends with a very un-Hobbesian thought: that domestic obedience is best secured through instruction of the masses “by Divines, and . . . from the Holy Scripture.”¹²¹ Hobbes was embroiled in conflict with ecclesiastical elites throughout his life, but the conflict had become particularly acute in his final decades; indeed, several scholars have argued that the prompt for the composition of the *Dialogue* (and several other late-life works) was the ongoing campaign against him and his followers on grounds of heresy.¹²² The most plausible interpretation of this passage is that the lawyer is rehearsing a set of conventional views about the basis of political obligation and interstate conflict which are not Hobbes’s own, and which the *Dialogue* was meant to undermine.

There are several additional reasons to be cautious about relying too much on the *Dialogue* itself as a source for Hobbes’s views, leaving aside the problems with this particular passage. The dialogue form raises obvious interpretive puzzles, and it is unclear what weight can be given to any single statement in such a conversation. Moreover, the *Dialogue* was written late in Hobbes’s long life, and remained unprinted until after his death.¹²³ Indeed, the text breaks off at the end, and appears to be unfinished, which may be what Hobbes meant when he claimed it was “at the end . . . imperfect”¹²⁴ and chose to withhold its publication after having delivered it to his printer. Modern readers have agreed that it does not show Hobbes at the height of his powers: the treatment of juridical and political themes is, in the words of its recent editor, “less full, less

119. HOBBS, *A Dialogue*, *supra* note 111, at 12.

120. See *id.*; see also sources cited *supra* note 57 (discussing this feature of the “rationalist” interpretation of Hobbes).

121. HOBBS, *A Dialogue*, *supra* note 111, at 12.

122. See TUCK, HOBBS, *supra* note 73, at 35 (“[T]he point of . . . the *Dialogue of the common laws*, was to show that on Hobbes’s interpretation of the source of English law, there could be no valid actions against anyone for heresy.”); Cromartie, *supra* note 112, at l-iii.

123. Cromartie, *supra* note 112, at xvi-ii.

124. *Id.* at xv.

rigorous, and less well-organized than his more famous earlier treatises.”¹²⁵ For all these reasons, it would be rash to place very much emphasis on the common lawyer’s stray remark – and it is misleading to cite it out of context as evidence of Hobbes’s realism about international war, as many scholars have mistakenly done.¹²⁶

III. CIVIL SOVEREIGNTY AND INTERNATIONAL ANARCHY

Hobbes’s earlier, canonical works of political theory provide much better evidence for his views on these matters, and I rely on them in developing a different interpretation of his lack of endorsement of a global Leviathan: that he considered his theory of civil sovereignty to offer a solution to both interpersonal and international conflict. In brief, if we are to take seriously a great deal of Hobbes’s writings, not to mention his stated *reasons* for writing, we cannot accept any presumption of constant war among commonwealths. Hobbes claimed that his work revealed the “royal road to peace,” and he understood that solving the problem of war was not merely a matter of avoiding civil war.¹²⁷ Indeed, he supposed individuals would unite into commonwealths not only for protection from interpersonal danger in the state of nature, but also for common defense against external enemies. As he put it explicitly in *De Cive*, “It is useless for men to keep peace amongst themselves, if they cannot protect themselves against outsiders; and it is impossible to defend themselves if their strength is not united.”¹²⁸ As Hobbes proposed to reveal the way that people can “keep peace amongst themselves,” we must assume that he offered, at least to his own satisfaction, some grounds for thinking that these gains in domestic order would not be undermined by international conflict.

Leaving aside Hobbes’s stated reasons for writing, there is a more basic argument that supports the contention that he must have supposed both

125. *Id.*

126. For examples of this common, if unfortunate tendency, see Laurie M. Johnson Bagby, *Mathematici Versus Dogmatici: Understanding the Realist Project Through Hobbes*, in *THE REALIST TRADITION AND CONTEMPORARY INTERNATIONAL RELATIONS* 96, 105 (W. David Clinton ed., 2007); Laurie M. Johnson, *Thomas Hobbes on the Path to Peace: Love of Glory Versus Realist Foreign Policy*, in *THE QUESTION OF PEACE IN MODERN POLITICAL THOUGHT* 49, 62 (Toivo Koivukoski & David Edward Tabachnick eds., 2015); and Lott, *supra* note 33, at 95, in which the author supposes the position of the “Common Lawyer” is Hobbes’s own view. The passage is cited even by some who oppose the conventional misreading of Hobbes, but who still incorrectly take it as reflecting his own view. See, e.g., BOTTICI, *supra* note 5, at 50 (citing this passage from the *Dialogue* without clarifying what evidence it provides against the realist reading of Hobbes).

127. HOBBS, *DE CIVE*, *supra* note 2, at 10; Hanson, *supra* note 56, at 333.

128. HOBBS, *DE CIVE*, *supra* note 2, at 78.

international war and domestic strife to be solved through the creation of sovereign states: his endorsement of the domestic analogy at the level of the problem but not the solution. Williams argues:

[I]f states are identical to Hobbesian individuals—that is, if the purported anarchy of international relations relies upon a direct analogy to Hobbesian political theory—why does not the move to an international Leviathan also follow directly? Conversely, if it is argued that states-as-Hobbesian-individuals would not contract globally because none could trust the others, then the initial construction of the Hobbesian contract must also be cast into doubt¹²⁹

Thus, if we do not conclude that Hobbes was confused—or at least vulnerable to an extension of his own argument, as Rousseau may have thought¹³⁰—then we must suppose that he believed a solution to the problem of international anarchy was already present in the political program he proposed. The move to a global Leviathan would have to be possible for the same reason that civil society itself was possible, and yet he never counseled it, but still claimed he had solved the problem of how to establish peace.

Why, then, might Hobbes have thought both international and civil wars would cease with the institution of a well-ordered commonwealth? To take up this central question, we must first recognize that Hobbes did not view international relations as constituting a sphere distinct from domestic political arrangements. Constructing the state at the domestic level does not leave intact an international anarchy that tends toward war; rather, the dynamics of interstate relations depend ultimately on domestic political arrangements. Neglecting Hobbes's view of the interrelation of domestic and international politics has made it appear that he missed a necessary international counterpart to his program of domestic peace. However, on a more detailed examination of Hobbes's writings, we discover less anxiety about the international state of nature than the interpersonal one, even though he uses both to illustrate the anarchic condition.

Perhaps, as Bull observes, the major reason for this difference is that while commonwealths share the problem of natural men in a state of anarchy, they do not need to respond in the same way because they are not, Hobbes argues, at similarly great risk.¹³¹ This means that states are not uniformly bellicose agents. The analogy between the interpersonal and international states of

129. Williams, *supra* note 14, at 225.

130. See ROUSSEAU, *supra* note 79, at 159, 164–65. For a discussion of Rousseau's extension of Hobbes's logic, see *infra* Part V.

131. See *supra* notes 53–54, 128 and accompanying text.

nature breaks down once we recognize that not only can states defend themselves better against other states than natural individuals can against one another, but they can also gather more information about what other states are planning, thereby addressing the epistemic uncertainty that leads to preemption in the interpersonal state of nature. Hobbes claims that the "first requirement" of a state's defense is intelligence gathering and espionage; the second is the fortification of borders and amassing of armaments and war monies for future emergencies.¹³² This is, of course, a far cry from genuine peace, as Hobbes recognized in denouncing *preparation for war as war*,¹³³ but it shows that Hobbesian commonwealths can afford to be less bellicose than Hobbesian individuals because they are less at risk from the anarchy of the international system. They require not preemptive strikes so much as espionage and defensive maneuvers, which reflect a less dangerous international context. In other words, not every anarchy is equally a state of war.

Moreover, a prudent policy of national self-defense is a very different matter from vainglorious aggression, which is at the root of interpersonal conflict in Hobbes's foundational analysis. Indeed, in a discussion of the activities that lead to prosperity, Hobbes warned against "*military activity*, which sometimes increases the citizens' wealth but more often erodes it."¹³⁴ He argued that militarism usually amounts to unprofitable adventurism: "[W]e should not take enrichment by these means into our calculations. For as a means of gain, military activity is like gambling; in most cases it reduces a person's property; very few succeed."¹³⁵ Considering this assessment in light of his general view that "[a]ll society . . . exists for the sake either of advantage or of glory,"¹³⁶ Hobbes evidently believed that military rivalry between states reflects the pursuit of glory and thus proves an unreliable means of pursuing a state's real interest, the survival of the commonwealth. This circumstance stands in contrast to that of natural individuals who, lacking a sovereign, must judge threats and strike preemptively in order to defend their lives (even when seeking survival, not glory). As Tuck argues, "The power and industry which a

132. HOBBS, DE CIVE, *supra* note 2, at 145-46.

133. See HOBBS, LEVIATHAN, *supra* note 58, at 88-89; *supra* text accompanying note 92.

134. HOBBS, DE CIVE, *supra* note 2, at 149.

135. *Id.* at 150.

136. *Id.* at 24.

state possesses give it a kind of security which no natural individual can possess, and as a result free it from ambition or vainglory.”¹³⁷

This view of Hobbes is at odds with the realist reading, but has been emphasized by some scholars of international relations, especially the rationalist school, which takes Hobbes to have laid down rules for a tolerably peaceable international order.¹³⁸ Bull argues that Hobbes’s “articles of peace contain within them most of the basic rules of co-existence on which states have relied in the international anarchy from Hobbes’s time and before it to our own,” and he emphasizes the difference between states and individuals under anarchy.¹³⁹ Similarly, Williams explains, “Hobbes believes that rational sovereigns will not act in an unnecessarily aggressive manner.”¹⁴⁰ He notes further that “[s]ubstantively, Hobbes’s ideas lend support not to contemporary analyses that focus upon the structural determinations of anarchy but to those that focus upon the interrelationship between domestic political structures and global processes.”¹⁴¹

As suggested above, this focus brings Hobbes closer to today’s “constructivism” than “realism” in refusing a dichotomous view of intrastate and interstate dynamics. Malcolm, in a systematic study of Hobbes’s views on international relations, agrees with this assessment: “Overall, Hobbes’s account contains many of the ingredients of what modern theorists describe as an ‘international society’”¹⁴² Malcolm argues that the law of nature, which obtains as a single law at both the domestic and international level, continues to operate as a thin moral requirement of state actors.¹⁴³ This thin moral requirement, along with aspects of state self-interest, conduces to an international order that is not one of pitched battle, except in the limiting case: “The general picture that emerges here is of cooperation and interaction between states, and between the subjects of states, taking place at many

137. Richard Tuck, *Grotius, Hobbes, and Pufendorf on Humanitarian Intervention*, in *JUST AND UNJUST MILITARY INTERVENTION: EUROPEAN THINKERS FROM VITORIA TO MILL* 96, 109 (Stefano Recchia & Jennifer M. Welsh eds., 2013).

138. See *supra* notes 25–32, 53–56 and accompanying text.

139. Hedley Bull, *Hobbes and the International Anarchy*, 48 *SOC. RES.* 717, 728 (1981). Williams takes Bull as representative of the “rationalism” of the English school of international relations. See Williams, *supra* note 14, at 227–28.

140. Williams, *supra* note 14, at 231.

141. *Id.* at 215.

142. MALCOLM, *supra* note 15, at 452.

143. *Id.* at 446.

levels.”¹⁴⁴ Malcolm emphasizes that the jural analogy between persons and states in the interpersonal and international state of nature does not erase other obvious, practical differences between persons and states.¹⁴⁵

It is important to recognize that these practical differences between natural individuals and states make the interpersonal state of nature and the international one susceptible to the same solution, namely, the domestic institution of a well-ordered commonwealth. As the rationalist reading has rightly emphasized, Hobbes believed states are different kinds of agents from natural individuals, and can more peaceably coexist with other states. Nevertheless, it may be possible to reconstruct a fuller picture of Hobbes’s views: the rationalist interpretation gives us a tolerable international anarchy, but not Hobbes’s promised “royal road to peace.”¹⁴⁶

Hobbes was clear that the establishment of a well-ordered commonwealth would mean security for its own citizens against internal and external threats. Generalizing this condition requires inferring from Hobbes’s political theory what a system of such states—a world of well-ordered commonwealths—would be like. Such a reconstruction is necessarily speculative, but since Hobbes assumes that individuals in the state of nature will be able and willing to form a commonwealth to secure themselves, individually and collectively, it is not too great a stretch to imagine a world composed of such commonwealths, even though Hobbes himself does not explore that vision. As I discuss in Part V below, an idea of a world system of republics is made explicit in Kant’s argument for perpetual peace, with international peace emerging as the happy byproduct of the internal character of republican states. Along similar lines, we may suppose that a world composed of Hobbesian commonwealths would prove a peaceful one, since their well-ordered nature would mean they neither pursue aggressive wars nor suffer insurmountable risks from external enemies.

Reading Hobbes in this way suggests a two-stage vision of international relations similar to his view of civil society in its prepolitical and political phases. First, before the founding of properly constructed sovereign states, a state of nature prevails both domestically and internationally. Then, with the construction of well-ordered commonwealths, we achieve the end of civil strife and the pacification of international relations, all in the same move, and without the need for a global Leviathan set above national sovereigns. At the

144. *Id.* at 452. Malcolm argues, “[T]he extreme case [Hobbes] describes should probably be understood by analogy with an asymptotic limit, a theoretical absolute which may be approached but never reached.” *Id.*

145. *Id.* at 450.

146. HOBBS, *DE CIVE*, *supra* note 2, at 10.

domestic level, peaceful civil relations prevail because citizens substitute a single sovereign judgment for their contentious private ones. At the international level, peaceful relations prevail because these transformed domestic polities do not make aggressive (glory-seeking) war and because they prove more easily defended in a state of nature than individuals; hence, they do not suffer the passions that lead them to bellicosity.

I argue in the next Part that this interpretation of Hobbes on international relations may best be understood in relation to the psychological transformation that citizens would undergo in civil society. This transformation would, in turn, determine the actions that states pursue, and thus the character of international relations. This suggestion becomes more plausible upon a deeper examination of two neglected elements of Hobbes's thought: his theory of the passions and what I call his realist-utopian ambitions. But even without accepting any of these particular claims concerning Hobbes's radically transformative ambitions, the general point should be clear from Hobbes's repeated insistence that our own reason—and therefore the laws of nature—dictates that we seek peace. This requires, on the one hand, leaving the state of nature to form a commonwealth, and, on the other, avoiding unnecessary war—both civil and international—once we are secured within such a domestic political order.

IV. THE RADICALISM OF THOMAS HOBBS

As mentioned above, Hobbes is rarely discussed in any depth in the legal-academic literature despite being a major jurisprudential thinker and arguably the founder of the modern tradition of legal positivism.¹⁴⁷ However, recent scholarship in the history of political thought has brought renewed attention to the nuances of Hobbes's political theory, including the radicalism of his agenda. A fuller excavation of Hobbes's thought, particularly his radical or emancipatory ambitions, may help explain how he thought that the institution of civil sovereignty could be expected to generate both domestic and international peace. In Section IV.A, I discuss a relatively neglected area of Hobbesian moral theory, namely his account of the passions. In the second, I characterize his approach, both in general and with respect to international relations, as a form of realist utopianism, which combines what would later be called realism with the contemporaneous English utopian tradition.

¹⁴⁷. On Hobbes's relative absence from legal-academic literature, see *supra* note 10 and accompanying text. For a characterization of Hobbes as an early legal positivist, see David Dyzenhaus, *Hobbes on the Authority of Law*, in *HOBBS AND THE LAW* 186, 187 (David Dyzenhaus & Thomas Poole eds., 2012).

A. Hobbes's Theory of the Passions

The argument that Hobbes offered a theory of international peace may come to seem more plausible, if we consider how he expected the establishment of the commonwealth to transform the passions of its citizens. Hobbes's theory of the passions is often neglected in accounts of his moral and political theory, and I rely extensively on Tuck's compelling reconstruction of it.¹⁴⁸ Such a reconstruction is necessary in part owing to the fact that Hobbes's most complete discussion of the passions is in his first major work on politics, *The Elements of Law*, which was not published in his lifetime and remains poorly known today.¹⁴⁹ *The Elements of Law* was a kind of English-language edition of the later Latin *De Cive*; while most of its arguments were replicated in *De Cive*, it is in *The Elements of Law* that we find the best elaborated discussion of human psychology in Hobbes's corpus.¹⁵⁰

In its first section, Hobbes put forward a theory of the passions that connects the emotions to an apprehension of differences in interpersonal power. It is a sophisticated and compelling account, in part because it enables us to see how changes in the political organization of society can produce, and in turn be reinforced by, changes in the way people perceive one another. After first having distinguished the different types of cognition, Hobbes committed himself to "search out and declare, from what conception proceedeth every one of those passions which we commonly take notice of."¹⁵¹ These passions "consist in conception of the future," which links "conception of power past, and the act to come."¹⁵² Power is understood as the capacity to achieve future

148. See Richard Tuck, *Hobbes's Moral Philosophy*, in *CAMBRIDGE COMPANION TO HOBBS* 184 (Tom Sorell ed., 1996); Richard Tuck, *The Utopianism of Leviathan*, in *LEVIATHAN AFTER 350 YEARS* 125, 130–32 (Tom Sorell & Luc Foisneau eds., 2004). J.C.A. Gaskin offers an interpretation of Hobbes's theory of psychology that differs dramatically from the account developed here. See J.C.A. Gaskin, *Introduction to HOBBS, ELEMENTS OF LAW*, *supra* note 58, at xi–xlii.

149. *The Elements* was circulated in manuscript in the early 1640s and published in 1650 without Hobbes's supervision—and possibly without his authorization—as two separate works, "Human Nature" and "De Corpore Politico." See HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at xlvii. A proper, unified edition of *The Elements* was finally published by Ferdinand Tönnies in 1889. See *id.*

150. By contrast, the chapter on the passions in *Leviathan* relies on a mechanistic metaphor and is less clear on the passions' relation to inequalities in interpersonal power. See HOBBS, *LEVIATHAN*, *supra* note 58, at 37–46. See the discussion of the reception of *The Elements* in RICHARD TUCK, *HOBBS AND ROUSSEAU* (forthcoming 2016) (manuscript at II.16) (on file with author).

151. HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 46.

152. *Id.* at 48.

ends; in *Leviathan*, Hobbes defined power clearly along these same lines: “The POWER of a Man, (to take it Universally,) is his present means, to obtain some future apparent Good.”¹⁵³ The imagination of future possibilities stirs in us emotions or passions, and this imagination is necessarily the result of our projection onto the future of our past ability to effect desired outcomes—our past power. Crucially, this power to achieve desired ends must be understood comparatively, and it is in this comparative dimension that the passions arise. Hobbes explained, “[B]ecause the power of one man resisteth and hindereth the effects of the power of another: power simply is no more, but the excess of the power of one above that of another.”¹⁵⁴ With this insight into the relativity of power, Hobbes could then “decode,” as Tuck puts it,¹⁵⁵ the various passions “we commonly take notice of”¹⁵⁶ into the contemplation of our excess or deficiency of power in relation to others.

For example, Hobbes explained, “Reverence is the conception we have concerning another, that he hath a power to do unto us both good and hurt, but not the will to do us hurt.”¹⁵⁷ Similarly, “PITY is imagination or fiction of future calamity to ourselves, proceeding from the sense of another man’s present calamity.”¹⁵⁸ Or, most importantly for Hobbes’s political analysis, “GLORY, or internal gloriation or triumph of the mind, is that passion which proceedeth from the imagination or conception of our own power, above the power of him that contendeth with us.”¹⁵⁹ Even lust, and the emotions that produce either laughter or weeping, can be understood in this way, as a reflection on one’s power compared to others. Our passions, then, are governed by our sense of what we can and cannot attain by the exercise of our power, understood as a comparative capacity.¹⁶⁰

This theory explains not only the passions, but also the social relations that flow from them. For example, Hobbes analyzed honor according to differential

153. HOBBS, *LEVIATHAN*, *supra* note 58, at 62.

154. HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 48.

155. Tuck, *supra* note 150 (manuscript at II.20); *id.* (manuscript at II.17-25).

156. HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 46.

157. *Id.* at 50.

158. *Id.* at 53.

159. *Id.* at 50.

160. As Hobbes explains,

But the propounding of benefits and of harms, that is to say, of reward and punishment, is the cause of our appetite and of our fears, and therefore also of our wills, so far forth as we believe that such rewards and benefits, as are propounded, shall arrive unto us.

Id.

power: "[T]he acknowledgement of power is called HONOUR; and to honour a man (inwardly in the mind) is to conceive or acknowledge, that that man hath the odds or excess of power above him that contendeth or compareth himself."¹⁶¹ This acknowledgment of power produces the various "actions, gesture, countenance and speech"¹⁶² with which honorable persons are received or recognized. "The signs of honour are those by which we perceive that one man acknowledgeth the power and worth of another,"¹⁶³ including all the forms of supplication, praise, and glorifying that would have been intimately familiar to him in an aristocratic society. On Hobbes's analysis, these passions produce appetites in people that govern their wills, and thus the actions that they undertake.¹⁶⁴

The significance of understanding the passions in this way becomes clear once we understand Hobbes to be putting forward not just a cognitive theory of the passions in relation to differential power and individual will, but a theory of human psychology as susceptible to transformation through politics. For the comparative assessment of one's own power in relation to that of another is not only the source of the passions but the source of politics as well. Political life offers a solution to the chaos of the passions roused by unequal power. On Hobbes's account, the malevolent or aggressive passions are not inborn or inevitable but, like the other passions, the result of the variable social circumstances of power. Both glory and "*vain-glory*" (imagined glory), for example, arise from this comparative assessment of power, as Hobbes described in a passage from *Leviathan*:

Joy, arising from imagination of a mans own power and ability, is that exultation of the mind which is called GLORYING: which if grounded upon the experience of his own former actions, is the same with *Confidence*: but if grounded on the flattery of others; or onely supposed by himself, for delight in the consequences of it, is called VAINE-GLORY: which name is properly given; because a well grounded *Confidence* begetteth Attempt; whereas the supposing of power does not, and is therefore rightly called *Vaine*.¹⁶⁵

161. *Id.* at 48.

162. *Id.*

163. *Id.* at 49.

164. As Hobbes notes, "Forasmuch as will to do is appetite, and will to omit, fear; the causes of appetite and of fear are the causes also of our will." *Id.* at 72.

165. HOBBS, *LEVIATHAN*, *supra* note 58, at 42.

He continues, “The *vain-glory* which consisteth in the feigning or supposing of abilities in our selves, which we know are not [present].”¹⁶⁶ Glory and vainglory both arise from the imagination of one’s own (real or fantasied) power, and they are both targets for Hobbes, as they produce conflict.

These passions—and the conflict that they engender—can be transformed by altering the background conditions of interpersonal power that generate them. This change comes about through political transformation: the unification of our diverse wills to construct a sovereign capable of equalizing the power differentials among us, which marks the transition from the psychological to the political in Hobbes’s theory.¹⁶⁷ The institution of the commonwealth produced through such union was described in *Leviathan* as the greatest of all powers.¹⁶⁸ This overarching power has the potential to alter the passionate nature of individuals by reducing the inequalities of power among them that produce passions and the quarrels to which they lead.¹⁶⁹

The nature of the equality that Hobbes seems to be concerned with here is not merely formal, juridical equality, but substantive equality, understood in terms of power, where power is defined, encompassingly, as the “present means, to obtain some future apparent Good.”¹⁷⁰ With citizens rendered equal in this respect within a commonwealth, the passions that they experience will not be those based on an inequality of power, such as glory or vainglory, but on its equality.¹⁷¹ In this new order, people will rather be animated by the

166. *Id.* at 42–43.

167. For a discussion of how contending individual wills can be brought into “union,” see HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 72.

168. See HOBBS, *LEVIATHAN*, *supra* note 58, at 62.

169. This passionate transformation is perhaps most comprehensible under *democratic* sovereignty, the first and necessary form of the commonwealth by institution according to Hobbes, in which a simple majority of citizens decides matters in controversy. See *supra* notes 85–88 and accompanying text. Where sovereignty has been transferred (or lost) to smaller groups or a single individual, it remains unclear whether the sovereign capable of equalizing power among the citizens will be similarly transformed.

170. HOBBS, *LEVIATHAN*, *supra* note 58, at 62.

171. The Hobbesian transformation of the passions resembles the “self-transformation thesis” advanced in modern democratic theory. See Mark Warren, *Can Participatory Democracy Produce Better Selves? Psychological Dimensions of Habermas’s Discursive Model of Democracy*, 14 *POL. PSYCHOL.* 209 (1993); Mark Warren, *Democratic Theory and Self-Transformation*, 86 *AM. POL. SCI. REV.* 8 (1992). This argument has even been connected to democratic peace theory. For example, Nicholas Rengger draws on Mark Warren to distinguish what he calls “Rousseauian” or “radical” theories of democracy from the more modest liberal-democratic analysis common in theories of the democratic peace. Rengger understands the self-transformation thesis as “the claim that the practices of democracy themselves transform the character of political life and the assumptions, capacities, motives, and ends of the involved agents,” which he uses to argue that “democratic culture is necessarily transformative and

passions of equality, which include what Hobbes calls “charity,”¹⁷² and would lack the passions, such as glory or fear, that stem from an inequality in power. As Tuck explains, since Hobbes’s “sovereign will enforce equality among the citizens, the struggl[e] for domination with our fellow men will cease, and with it will vanish all the passions in which we imagine ourselves as superior to other men,” leaving only “the passions which stress *equality*” such as charity or “compleasance.”¹⁷³

The end point of Hobbes’s analysis of the passions is a world without strife in which the bellicose and fearful passions have been transformed by a new political order.¹⁷⁴ To posit that Hobbes argued for such a profound transformation, not just of politics but of the human passions, is to deny any reading of Hobbes, whether realist or rationalist, that stops with his diagnosis of the *problem* of disorder and does not move beyond it to his proposed solution. Arguing that Hobbes saw such a solution requires taking up an altogether different view – seeing him, in short, as a kind of utopian thinker.

B. Hobbes as a Realist-Utopian

The claim that Hobbes’s ideas represent an exercise in utopian political imagination challenges the dominant conception of him not only in international relations, but in much of political theory as well. However, Hobbes himself suggested the possibility of achieving radical transformation

that among its most profound transformations is an attitude to the use of force in general and military force in particular.” N.J. RENGGER, *INTERNATIONAL RELATIONS, POLITICAL THEORY AND THE PROBLEM OF ORDER* 116–17 (2000).

172. Hobbes explains, “There is yet another passion sometimes called love, but more properly good will or CHARITY. There can be no greater argument to a man of his own power, than to find himself able, not only to accomplish his own desires, but also to assist other men in theirs: and this is that conception wherein consisteth charity.” HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 56. While this passage can make charity seem a passion based on inequality of power—like glorying, for example—Hobbes later insists that charity is the passion “by which we strive mutually to accommodate each other,” and that it “must be the cause of peace.” *Id.* at 91.

173. Tuck, *supra* note 150 (manuscript at II.24).

174. In an earlier and neglected effort to reconstruct Hobbes’s international theory, Donald Hanson argued along similar lines that Hobbes’s professed commitment to peace required a conjoint domestic and international analysis centering on the role of the passions. See Hanson, *supra* note 56. However, he focused not on the idea of a transformation of the passions under civil society through the equalization of power among citizens, which Tuck has emphasized, see *supra* note 150 and accompanying text, but rather on an educational role for the state in generating pacific relations. See Hanson, *supra* note 56, at 352 (“Leviathan must be primarily an educative state.”).

through a new kind of political understanding, as in the Dedication to *De Cive*, where he suggested the possibility of achieving lasting peace:

[I]f the patterns of human action were known with the same certainty as the relations of magnitude in figures, ambition and greed, whose power rests on the false opinions of the common people about right and wrong, would be disarmed, and the human race would enjoy such secure peace that (apart from conflicts over space as the population grew) it seems unlikely that it would ever have to fight again.¹⁷⁵

Our lack of appropriate understanding of the “patterns of human action” forecloses this possibility: “But as things are, the war of the sword and the war of the pens is perpetual”¹⁷⁶ And yet Hobbes thought these conflicts could be brought to an end with the elimination of “false opinions”¹⁷⁷ and interpersonal fear, which was the purpose of the political union he advanced. Hobbes’s emancipatory theory thus begins with a violent and disordered world but looks forward to one of security and peace in the commonwealth.

This utopian strain is a neglected element in Hobbes’s thought, but it is arguably central to all of his writings on politics, theology, and moral philosophy. In a series of works, Tuck has emphasized this radical element, arguing that “Hobbes himself believed that the correct understanding and application of his philosophy would transform human life.”¹⁷⁸ Tuck compares this transformative ambition to the explicit utopianism of Francis Bacon’s *New Atlantis*,¹⁷⁹ and reminds us that the young Hobbes served briefly as Bacon’s literary secretary.¹⁸⁰ In discussing Hobbes’s intention to liberate us from unnecessary fear, Tuck explains that “the theory of *Leviathan* stands forth clearly as utopian, resembling very closely the utopias of the eighteenth or even the nineteenth century,”¹⁸¹ particularly in Hobbes’s advocacy of a civil religion with which to found a new and peaceable political order. Tuck interprets the

175. HOBBS, *DE CIVE*, *supra* note 2, at 5. Note that Hobbes’s claim is not that geometric figures have a transcendental status outside human convention and thus can be known with certainty, but merely that they have been properly defined and can be known precisely because we have invented them.

176. *Id.*

177. HOBBS, *ELEMENTS OF LAW*, *supra* note 58, at 62.

178. Richard Tuck, *Introduction* to HOBBS, *LEVIATHAN*, *supra* note 58, at ix, xxvi.

179. *Id.* at xxvi (“It may be relevant to compare Hobbes’s ambitions in this respect with the equally utopian ambitions of Bacon—who was, after all, the author of an avowedly utopian political work, the *New Atlantis*.”).

180. On Hobbes’s relationship to Bacon, and his brief service as Bacon’s amanuensis, see *id.* at xvi.

181. *Id.* at xliii.

second half of *Leviathan*—in which Hobbes proposes an alternative form of Christianity that rejects the immateriality of the soul and denies the existence of Hell—as a utopian project meant to overcome religiously induced fear.¹⁸² Relatedly, in an examination of early modern views on humanitarian intervention, including Hobbes's, Tuck analyzes the discussion of the "kingdom of darkness" in the final book of the *Leviathan*.¹⁸³ Here, Tuck diagnoses a "utopian tinge" to Hobbes's views on international relations, explaining that "foreign war is as much a sign of darkness as civil war," but "the well-founded commonwealths which Hobbes envisaged would not constantly be at war with one another."¹⁸⁴

Tuck is not the only contemporary scholar to note the utopian elements of Hobbes's thought, though not all who recognize this aspect of it use that term. Malcolm, in an essay on Hobbes's place in the European "republic of letters," distinguishes Hobbes's emancipatory political commitments from the quiescence and elitism of the intellectual circles in which he moved.¹⁸⁵ Malcolm stresses Hobbes's concern with the destructive role of false beliefs held by both common people and elites. Furthermore, he argues that Hobbes pursued a "negative programme of demystification" and a "positive programme of political education," which, taken together, amount to a "cultural transformation."¹⁸⁶ While Malcolm avoids the label "utopian," he stresses the radical, emancipatory character of Hobbes's thought: "What this implied was, in other words, not utopianism, but enlightenment. Hobbes's programme could even be described as a project of liberation—liberation, that is, from

182. Tuck, *Civil Religion*, *supra* note 69, at 120, 138 ("Revolutionary moments tend to breed utopianism, and perhaps we have always overlooked the greatest of the English revolutionary utopias.").

183. Hobbes takes foreign and civil conflict—including intersubjective disagreement—as a sign of the spiritual "Darknesse" of our time, asking,

Whence comes it, that in Christendome there has been, almost from the time of the Apostles, such justling of one another out of their places, both by forraign, and Civill war? such stumbling at every little asperity of their own fortune, and every little eminence of that of other men? and such diversity of ways in running to the same mark, *Felicity*, if it be not Night amongst us, or at least a Mist? wee are therefore yet in the Dark.

HOBBS, *LEVIATHAN*, *supra* note 58, at 418.

184. Tuck, *supra* note 137, at 109.

185. NOEL MALCOLM, *Hobbes and the European Republic of Letters*, in *ASPECTS OF HOBBS*, *supra* note 15, at 457.

186. *Id.* at 540–44.

falsehood, and from the power of those groups, elites, and confederacies that manipulate falsehood for their own ends.”¹⁸⁷

It is this transformative and radical character of Hobbes’s thought, linked to an unsentimental analysis of power and conflict, that makes it what I call a “realist-utopian” account. From a “realist” starting point, Hobbes goes further to imagine a profound emancipation that would offer the foundation for both domestic and international peace. We see both sides of this concern framing the dedication to *De Cive*, where Hobbes wrote, “There are two maxims which are surely both true: *Man is a God to man*, and *Man is a wolf to Man*. The former is true of the relations of citizens with each other, the latter of relations between commonwealths.”¹⁸⁸ States are thus depicted as in a state of war, based on an analogy to the domestic “state of nature.” But the lack of parallelism between intrastate and interstate relations is telling: the difference between a godlike peace and a bestial violence indicates that a profound transformation has taken place within states, and thus that deep psychological transformation is possible through politics. Indeed, to claim that human beings can be as Gods or wolves to one another is to see a very wide range of human possibilities indeed—and hence, of possible transformation. Moreover, the fact that Hobbes suggested the possibility of attaining a “secure peace” a few pages later means that the expected end to conflict was not only within the state but also beyond it; thus, any division between godlike intrastate and bestial interstate relations appears difficult to sustain as a structural requirement of the international order, or as a permanent feature of human existence.

The claim that Hobbes’s account of international relations should be understood as a realist-utopian peace theory is meant to recall Rawls’s analysis in *The Law of Peoples* concerning “realistic utopias.” Rawls understands “realistic utopianism” as adapting Rousseau’s formula, which “takes people as they are (by the laws of nature), and constitutional and civil laws as they might be.”¹⁸⁹ Rawls offers, in effect, a modified argument of the kind that Kant had made, with further reliance on arguments from contemporary international relations concerning democratic and liberal peace theory.¹⁹⁰ While Rawls’s debts to Kant and Rousseau are clear, the origin of this way of thinking is, as I have argued, Hobbes’s foundational social-contract theory. This broad

¹⁸⁷. *Id.* at 544.

¹⁸⁸. HOBBS, *DE CIVE*, *supra* note 2, at 3.

¹⁸⁹. JOHN RAWLS, *THE LAW OF PEOPLES* 13, 124 (1999) (describing Rawls’s debt to Rousseau and attempting to reconcile a “realistic” starting point in the contemporary status quo with the “utopian” demands of justice).

¹⁹⁰. *See id.* at 36 (discussing Rawls’s debt to Kant); *id.* at 8, 125–26 (discussing Rawls’s reliance on contemporary democratic peace theory); *id.* at 46–48 (providing an account of why specifically “liberal” peoples will be peaceful).

continuity should be unsurprising given that Rousseau and Kant were careful readers of Hobbes as well as inspirations to Rawls.¹⁹¹

We may note, however, several ways in which Hobbes's realist utopianism differs from Rawls's realistic utopianism. First and most obviously, Rawls takes as the core units of his peaceable international system "well-ordered" constitutional states of a highly specific liberal-democratic variety, which are not identical to the Hobbesian commonwealth. Furthermore, Rawls makes a point of emphasizing "peoples" and not "states," a terminological and conceptual difference from Hobbes, who understood the "commonwealth" as the political form of a people rather than an anarchic multitude.¹⁹² Rawls's professed reason for this emphasis was his frustration with the contemporary international-relations literature, which he saw as having a *raison d'état* orientation and assuming that states as states have built-in drives, purposes, or rational strategies. His argument therefore focused not on international law, formally understood as an interstate legal system, but rather on a hypothetical "Law of Peoples," which allowed him to diagnose the domestic character of "decent peoples" and prescribe their appropriate foreign policies.¹⁹³ However, it is not clear that a "people" ever accomplishes its political aims except through an act of self-constitution that inaugurates "the state"; the term "peoples," moreover, may well be subject to a different but equally complex set of variations and terminological disputes.¹⁹⁴

Finally and perhaps most profoundly, Hobbes argued that the character of people as they are¹⁹⁵ is not fixed in any simple sense, but depends upon the ways in which a political regime settles the question of interpersonal power and the allotment of reasons for fear (both genuine and spurious). In performing these functions, the commonwealth affects the composition of the citizens' passions, which in turn influences the regime—at least where the regime is well ordered and in some sense the citizens' own construction. Owing to this reciprocal fashioning of people and their political regimes, one might say that, for Hobbes, politics goes all the way down. It is not obvious that this is so for Rawls, who seemed to predicate his conception on a familiar liberal distinction

191. On Rousseau, Kant, and Rawls in relation to Hobbesian contractarianism, see *infra* Part V.

192. On Rawls's usage, see Grace Roosevelt, *Rousseau Versus Rawls on International Relations*, 5 EUR. J. POL. THEORY 301, 303 (2006). Recall that on Hobbes's analysis, the "multitude" only becomes a "people" through the self-imposition of a political decision rule—that is, in the institution of a commonwealth. HOBBS, *DE CIVE*, *supra* note 2, at 137.

193. RAWLS, *supra* note 189, at 25–26.

194. See Roosevelt, *supra* note 192; see also BOTTICCI, *supra* note 5, at 90–91 (discussing the problems with Rawls's use of "peoples").

195. RAWLS, *supra* note 189.

between public and private that restricts political transformation to the public sphere.¹⁹⁶

These differences aside, *The Law of Peoples*, Rawls's final work, shows how a theory of international relations can combine both realist and utopian elements without contradiction, by focusing on the domestic character of the societies whose external relations are in question. A similar combination of perspectives appears in Hobbes's political theory, as Hobbes recognized. Indeed, Hobbes appears to have been worried that his thought would come across as too theoretical and too utopian. In a telling passage from *Leviathan*, Hobbes answers his imagined critics, defending the necessity of absolute and undivided sovereignty in a proper commonwealth:

The greatest objection is, that of the Practise; when men ask, where, and when, such Power has by Subjects been acknowledged. But one may ask them again, when, or where has there been a Kingdome long free from Sedition and Civill Warre. In those Nations, whose Common-wealths have been long-lived, and not been destroyed, but by forraign warre, the Subjects never did dispute of the Sovereign Power. But howsoever, an argument from the Practise of men, that have not sifted to the bottom, and with exact reason weighed the causes, and nature of Common-wealths, and suffer daily those miseries, that proceed from the ignorance thereof, is invalid. For though in all places of the world, men should lay the foundation of their houses on the sand, it could not thence be inferred, that so it ought to be. The skill of making, and maintaining Common-wealths, consisteth in certain Rules, as doth Arithmetique and Geometry; not (as Tennis-play) on Practise onely: which Rules, neither poor men have the leisure, nor men that have had the leisure, have hitherto had the curiosity, or the method to find out.¹⁹⁷

Although he acknowledged that there are a few historical examples of long-lived commonwealths, Hobbes thought that arguing from such examples was an inadequate way to understand political possibility. Instead, he suggested his

196. In developing what he called the "idea of public reason," Rawls seems to restrict his claims concerning the reciprocal fashioning of individuals and their collective contexts to public matters. RAWLS, *supra* note 189, at 171-72. While politics may not go "all the way down" for Rawls, it arguably does in Kantian theory. Kant illustrates such dialectical transformation in considering a "nation of devils," who he claimed could found a republic if only they possessed adequate understanding. KANT, *supra* note 8, at 112-13 ("[W]e cannot expect their moral attitudes to produce a good political constitution; on the contrary, it is only through the latter that the people can be expected to attain a good level of moral culture.").

197. HOBBS, *LEVIATHAN*, *supra* note 58, at 145.

new method of understanding politics as a way to get beyond the current circumstances, in which we all “build our houses on the sand.” In so doing, he offered a defense of the utopian or radical imagination against the weight of the status quo. This defense was repeated by later authors, notably Kant, who, in his late essay on the distinction between theory and practice, advanced a remarkably Hobbesian political account and made a similar defense of the role of theory in political reform as against the alleged value of historical precedent.¹⁹⁸

V. INTERNATIONAL PEACE IN THE SOCIAL-CONTRACT TRADITION

The similarities between Hobbes, Kant, and Rawls suggested at various points in this Essay are not accidental, but reflect abiding commitments of the social-contract tradition beginning with Hobbes. In addition to a primary focus on the civil constitution of modern states, the key theorists in this tradition—including Hobbes, Rousseau, Kant, and Rawls—have also been concerned with the foreign relations of these states. Specifically, the concern to achieve enduring peace has been central to these accounts, as recent historiography has revealed starting in the eighteenth century.¹⁹⁹ Without pretending to a shared project across several centuries, it is nevertheless possible to see in Kant’s international theory, and later in Rawls’s, the development of a line of thinking that began with Hobbes. In this Part, I explore the evolution of social-contract theory after Hobbes in order to correct twentieth-century accounts that rely on a stylized opposition between “Kantian” and “Hobbesian” approaches to international law and policy.

As suggested above, and against the conventional opposition, Kant and Hobbes should be understood as peace theorists, since both claimed that political changes at the domestic level could produce a peaceful world. Given the right kind of domestic political transformation, the motivation for aggressive wars would be undermined, even eliminated.²⁰⁰ More particularly,

198. IMMANUEL KANT, *On the Common Saying: “This May Be True in Theory, but It Does Not Apply in Practice,”* in *POLITICAL WRITINGS*, *supra* note 8, at 61. Note that Kant’s analysis in this essay follows Hobbesian reasoning in spite of an attack on Hobbes by name; as Peter Gay aptly described the reception of Hobbes, his “work was too great to be ignored but [his] name was too disreputable to be praised.” PETER GAY, *THE ENLIGHTENMENT: THE RISE OF MODERN PAGANISM* 99 (1966).

199. *COMMERCE AND PERPETUAL PEACE IN ENLIGHTENMENT THOUGHT*, *supra* note 19.

200. See KANT, *supra* note 8, at 93–115. Note that in Kant’s view, the achievement of a pacific order may nevertheless run through war, understood as a painful learning experience in a philosophical history of humanity emphasizing the progressive attainment of self-mastery.

both Hobbes and Kant should be considered realist-utopian peace theorists, as they described the international implications of domestic political changes that we have yet to see realized, at least on a worldwide scale, yet began from the assumption of an anarchic and dangerous state of nature. Their analyses of international relations notably share two significant features. First, they avoid treating states as theoretical “black boxes” around which a theory of international relations can be built; rather, the nature of the domestic regime matters for the foreign relations that states pursue and for the legitimacy of international law. Second, both imagine, from a realist starting point, a transition to a peaceful world that we can now only describe as utopian. Contemporary democratic peace theory is, in this respect, much more continuous with prior social-contract theory than is usually recognized.²⁰¹

Kant’s realist-utopian argument for a peaceful world of republics is more explicitly developed than Hobbes’s earlier account. Recognizing it nevertheless requires that we interpret Kant correctly: not as an advocate for “supranational” or global governance, but for international law understood as the construction of sovereign republics.²⁰² As Patrick Capps and Julian Rivers

See KANT, *Idea for a Universal History with a Cosmopolitan Purpose*, in *POLITICAL WRITINGS*, *supra* note 8, at 41.

201. For references to contemporary democratic and liberal peace theory, see *supra* note 8 and accompanying text. See also RAWLS, *supra* note 189, at 36 (following Kant’s thinking about global governance). As Jack Levy has argued, democratic peace theory is “as close as anything we have to an empirical law in international relations.” Jack S. Levy, *Domestic Politics and War*, in *THE ORIGIN AND PREVENTION OF MAJOR WARS* 79, 88 (Robert I. Rotberg & Theodore K. Rabb eds., 1989). While its roots in Kant’s argument concerning “perpetual peace” have been widely explored, the links to Hobbes have not been—perhaps because Hobbes’s role in the theorization of modern democracy has been largely overlooked. See *supra* Section I.A (discussing Hobbes’s democratic theory). While Hobbes appears prescient in this respect, note that neither his account (which presupposes the “well-ordered commonwealth”) nor contemporary theories of “democratic peace” suggest that states in transition to democracy will necessarily prove pacific; indeed, depending upon the ways in which domestic political coalitions respond to the challenges of state consolidation, they may be more inclined toward external violence. See EDWARD D. MANSFIELD & JACK SNYDER, *ELECTING TO FIGHT: WHY EMERGING DEMOCRACIES GO TO WAR* 7 (2005) (presenting statistical findings that democratizing states are more war prone than their nondemocratic counterparts).

202. See ION, *supra* note 8, at 59 (presenting an account of the elements of “cosmopolitan community-building” among cooperative, sovereign states); Garrett Wallace Brown, *State Sovereignty, Federation and Kantian Cosmopolitanism*, 11 EUR. J. INT’L REL. 495 (2005) (analyzing Kant’s conception of international relations and arguing against the view that Kant suggested transcending the role of the sovereign states); *infra* notes 230–238 and accompanying text (discussing the role of sovereignty in current controversies in international relations); cf. sources cited *supra* note 13 (discussing the Kantian orientation of European supranational law). As Howard Williams argues, “With his idea of a federation of free states that would form the proper basis of a reformed international law, Kant seeks to

note, “Kant rejects a global republic or a global monarchy” as well as “a federal international system along the lines of a ‘state of peoples.’”²⁰³ Instead, they explain,

Kant understands the ideal institutional form of the international legal order to be a weak, noncoercive confederation of republican sovereign states, with minimal or no supranational forms of institutional governance, in which states have plenary jurisdiction. He thinks that properly constituted states through their collective actions could perform the administrative functions of the international legal order.²⁰⁴

Kant’s cosmopolitan legal theory elaborates the law of nations regarding conditions of hospitality (as in *Perpetual Peace*) and for regulating commerce among nations (as in *Doctrine of Right*), but it does not imply coercive global institutions.²⁰⁵ Indeed, while Hobbes did not discuss the possibility or desirability of a global Leviathan, Kant was explicit in rejecting it: he argued it would prove a “soulless despotism” bound to lapse back into civil war or anarchy.²⁰⁶ Instead, Kant supposed, like Hobbes, that analogues to domestic sovereignty at the global level would be simply unnecessary if properly constructed states could become the constitutive units of the international system. Indeed, on this account, a move toward global sovereignty may be viewed as counterproductive to international peace, for reasons I sketch in the next Part.

The prospect of international peace developing as the result of the well-ordered or republican character of the state must be understood in relation to a broader eighteenth-century preoccupation with how the modern European state system could be rendered pacific, particularly in the context of imperial expansion and commercial competition. Indeed, as several historians of

complement the domestic order brought about by the civil commonwealth of Hobbes’s *Leviathan* with a system of cooperation among sovereign peoples.” Williams, *supra* note 23, at 108.

203. Capps & Rivers, *supra* note 13, at 230.

204. *Id.*

205. See IMMANUEL KANT, *The Doctrine of Right*, in *THE METAPHYSICS OF MORALS* 37, 69–71 (Mary Gregor ed. & trans., Cambridge Univ. Press 1996) (1797); KANT, *supra* note 8, at 105–08.

206. KANT, *supra* note 8, at 113 (arguing for a peaceful federation of separate states, not a world government). Also on this point, see RAWLS, *supra* note 189, at 36; and Capps & Rivers, *supra* note 13, at 230–31. Unlike Hobbes, Kant may have had to discuss and reject explicitly the possibility of a global Leviathan given that he was working in the aftermath of Saint-Pierre’s project for perpetual peace, which on allegedly “Hobbesian” grounds – constituting perhaps the first naïve application of the domestic analogy – sought an end to war in the creation of a supranational European sovereign. On Saint-Pierre’s plan, see *infra* notes 208–210 and accompanying text.

political thought have recently shown, the Kantian argument for “perpetual peace” through the achievement of a system of sovereign republics was Kant’s particular take on a broader eighteenth-century trope. While it remains the most famous version today, it was, as Nakhimovsky explains, but “one contribution to a large and varied literature that extends back to the seventeenth century and proliferated after every major war in the eighteenth century.”²⁰⁷ While Kant’s proposal for perpetual peace was committed to a system of sovereign states, many eighteenth-century theorists supposed that the modern state system could never be rendered peaceful, and completed Hobbes’s domestic analogy by deriving the necessity of a global (or, at least, European) hegemon to prevent war. In fact, the term “perpetual peace” was popularized many decades before Kant’s essay, following the Treaty of Utrecht in 1713, by Saint-Pierre, who proffered a utopian plan for a kind of European Union of *ancien regime* monarchies.²⁰⁸ Saint-Pierre’s scheme was reworked and revised by later theorists, including the skeptical Rousseau,²⁰⁹ who was put in charge of the posthumous editing of Saint-Pierre’s papers in the 1750s.²¹⁰ Rousseau’s own views on international peace were propounded in the midst of this complicated engagement with Saint-Pierre, and left mostly unpublished

207. Isaac Nakhimovsky, *Perpetual Peace and Political Theory in the Enlightenment*, in *COMMERCE AND PERPETUAL PEACE IN ENLIGHTENMENT THOUGHT*, *supra* note 19 (manuscript at 6).

208. The Abbé de Saint-Pierre, *A Project for Settling an Everlasting Peace in Europe*, in *INTERNATIONAL RELATIONS IN POLITICAL THOUGHT: TEXTS FROM THE ANCIENT GREEKS TO THE FIRST WORLD WAR* 394 (Chris Brown et al. eds., Cambridge Univ. Press 2002) (1714). On Saint-Pierre’s initiative, see Céline Spector, *The Plan for Perpetual Peace: From Saint-Pierre to Rousseau* (unpublished manuscript), <http://celinespector.com/wp-content/uploads/2011/02/Rousseau-Saint-Pierre-Spector.pdf> [<http://perma.cc/94TB-HDX6>]. While Saint-Pierre used the term prominently, proposals for a dramatic reworking of European politics for the sake of peace go back further, including to Andrew Fletcher’s discussion of “perpetual peace” a few decades earlier, or indeed to Hobbes’s suggestion in the epistle dedicatory to *De Cive* that a properly constituted political theory would lead to a “secure peace.” See ANDREW FLETCHER, *An Account of a Conversation Concerning a Right Regulation of Governments for the Common Good of Mankind*, in *POLITICAL WORKS* 175, 191 (John Robertson ed., Cambridge Univ. Press 1997) (1704); HOBBS, *DE CIVE*, *supra* note 2, at 5.

209. For Rousseau’s texts on Saint-Pierre (a “Summary” and a “Critique”), see GRACE G. ROOSEVELT, *READING ROUSSEAU IN THE NUCLEAR AGE*, apps. B & C (1990).

210. For Rousseau’s own discussion of his task, see JEAN-JACQUES ROUSSEAU, *The Confessions*, in *THE COLLECTED WRITINGS OF ROUSSEAU: THE CONFESSIONS AND CORRESPONDENCE, INCLUDING THE LETTERS TO MALESHERBES* 5, 342-43 (Christopher Kelly et al. eds., Christopher Kelly trans., Dartmouth Coll. Press 1995) (1782). For other discussions, see ROOSEVELT, *supra* note 209, at 6-7; and Spector, *supra* note 208.

during his own lifetime.²¹¹ He seemed to have viewed Saint-Pierre's proposal as naïve, given the character of *ancien regime* states.

Kant was a great admirer of Rousseau²¹² and, like Rousseau, a careful reader of Hobbes.²¹³ In his understanding of international relations, Kant shared Rousseau's worry that "the Hobbesian theory entailed no end to the state of war, for modern states are inextricably involved in a continuous and destructive warfare."²¹⁴ In this respect, it may be Rousseau, rather than Hobbes, who should be considered the father of "Hobbesian" realism, since it was Rousseau, rather than Hobbes, who suggested that the international sphere was an unconstrained anarchy – and therefore claimed that Hobbes had failed to see the limits of his own theory.²¹⁵ If there is a stylized opposition to be had in international theory, it may be between the pessimism of Rousseau and the (constrained) optimism of Kant in analyzing the dynamics of peace and war in a world of modern states.²¹⁶

It is important to note, however, that Rousseau's criticism was not directed against a hypothetical interstate order of Hobbesian commonwealths. It concerned rather the interstate order of his own time, in which *ancien regime* monarchies had been made strong through political consolidation at the domestic level²¹⁷ but remained violent and untransformed in the radical way

211. ROUSSEAU, *supra* note 210, at 342-43; see also TUCK, *supra* note 17, at 141 (discussing Rousseau's involvement with Saint-Pierre). For an overview of Rousseau's theory of international relations generally, see TUCK, *supra* note 17, at 197-207. Note that, as early as his *Discourse on Political Economy*, Rousseau seems to have held that properly constituted republics would *not* engage in "unjust war" unless "the people is seduced by private interests." ROUSSEAU, *supra* note 79, at 8.

212. Some have claimed that the only decoration Kant admitted into his otherwise unadorned house was an engraving of Rousseau. See ROGER SCRUTON, KANT 5 (1982).

213. See TUCK, *supra* note 17, at 197-225 (discussing the "Hobbesianism" of Rousseau and Kant).

214. *Id.* at 215.

215. Tuck writes:

Rousseau had, in effect, given a sceptical twist to Hobbes's theory, just as Hobbes himself had done to Grotius's: if there cannot be international peace, then the formation of Hobbesian states cannot protect their citizens from the ravages of the state of nature, since on Hobbes's own account the state is itself an agent in a state of nature. But Hobbes's theory of state formation was the most plausible on offer, and Rousseau could provide no solution to his own problem.

Id. at 207.

216. See *id.* at 218-19, 221 (arguing that "Kant's intention was to show that a genuinely Hobbesian account of modern international relations was possible, and that Rousseau's pessimism on this score was unfounded").

217. This domestic political consolidation is sometimes described as the rise of the fiscal-military state. See generally JOHN BREWER, THE SINEWS OF POWER (1990) (documenting the rise of

Hobbes envisioned.²¹⁸ Kant did not share Rousseau's pessimism about international peace,²¹⁹ even while he was no less convinced that states would engage in violent conflict, which, he thought, would lead them gradually to understand the necessity of peace.²²⁰

Kant's optimism on this score came from his synthesis of the social-contractarian account of politics that began with Hobbes²²¹ and its main eighteenth-century offshoot and rival. This rival view was not Saint-Pierre's federation of kings, nor even Rousseau's pessimism about the violence of modern states, but rather the faith that commerce would pacify the international order. Against the views of Hobbes, Rousseau, and others who feared that foreign entanglements had the potential to inflame international rivalries, theorists from Montesquieu to David Hume and Adam Smith argued that commerce had the potential to pacify interstate relations.²²² Yet the imbrication of competitive modern states with a globalizing system of commerce was also understood to constitute a new and unsettled interstate order, a "jealousy of trade" with the potential to foment ever-greater

the English state in Hobbes's time); THE FISCAL-MILITARY STATE IN EIGHTEENTH-CENTURY EUROPE (Christopher Storrs ed., 2009).

218. It should be remembered that Rousseau's "The State of War" remained unpublished, and it is hard to know how to weigh views that an author did not commit to print. Furthermore, Rousseau's criticism concerned the continuation of war in contemporaneous European society. His own extension of Hobbes's social-contract theory was profound and pointed in a radical direction, as Kant clearly saw.
219. For a characteristic example of Rousseau's pessimism, see JEAN-JACQUES ROUSSEAU, *The State of War* [*L'Etat de Guerre*], in *THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS*, *supra* note 79, at 162. See also Roosevelt, *supra* note 192, at 311-12 (describing Rousseau's view on the inevitability of hostility among nations).
220. Kant argued that the experience of terrible international war would, over time, teach humanity to seek peace. See, e.g., KANT, *supra* note 200, at 41-53; KANT, *supra* note 8, at 93-115. Whether it is safe to nurture this hope in the nuclear age is of course another question. See ROOSEVELT, *supra* note 209; SCARRY, *supra* note 66.
221. See ELISABETH ELLIS, KANT'S POLITICS: PROVISIONAL THEORY FOR AN UNCERTAIN WORLD 15, 33-34 (2005) (comparing Kant's account of the social contract to Hobbes's).
222. Compare ALBERT O. HIRSCHMAN, *THE PASSIONS AND THE INTERESTS: POLITICAL ARGUMENTS FOR CAPITALISM BEFORE ITS TRIUMPH* 61-63 (20th anniversary ed. 1997) (discussing eighteenth-century understandings of *doux commerce* theories, which held that commercial exchange was pacifying and civilizing), 1 BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* 316-17 (Thomas Nugent trans., Colonial Press 1900) (1748) (arguing that commerce had the potential to pacify interstate relations), and HELENA ROSENBLATT, *ROUSSEAU AND GENEVA: FROM THE FIRST DISCOURSE TO THE SOCIAL CONTRACT, 1749-1762*, at 58-60 (1997) (reviewing Hume's important contributions to *doux commerce* theory), with Tom Sorell, *Hobbes, Public Safety and Political Economy*, in *INTERNATIONAL POLITICAL THEORY AFTER HOBBS*, *supra* note 10, at 42 (discussing Hobbes's account of "public safety" and suggesting that it contains more international and economic analysis than is commonly supposed).

violence.²²³ Kant's proposal for perpetual peace combined these two views, starting from an essentially Hobbesian account of the social contract but including as a stabilizing factor what he called "unsocial sociability"²²⁴ – the selfishly motivated, other-oriented actions constitutive of what Smith called "commercial society."²²⁵

Crucially, Kant's presupposition was that international commerce would not undermine the sovereign character of the modern state even while it provided pacifying connections across borders. However, it had become clear to observers even by the end of the eighteenth century that the ability of modern states to regulate the economy within their borders depended upon effective control over their external commercial relations, particularly for states pursuing national welfare schemes. As Nakhimovsky has shown, one logical extension of Kant's analysis was the argument that state sovereignty and international peace required what Johann Gottlieb Fichte called the "closed commercial state,"²²⁶ or at least forms of national self-sufficiency that insulated states from international economic interdependence.

The question of how to enable effective sovereign regulation of the domestic economy against the backdrop of dense foreign commercial relations has never been fully resolved. A clear line of analysis runs from these late eighteenth-century theories through to the work of John Maynard Keynes and other architects of the twentieth-century postwar economic order,²²⁷ down to present-day concerns about the domestic policy space that economic globalization is foreclosing.²²⁸ What all these accounts attempt to work out, at bottom, is how the sovereignty of the state that Hobbes helped to justify and rationalize – and which, on his account, proved essential for a durable

223. See ISTVAN HONT, *JEALOUSY OF TRADE* 5–17 (2005).

224. KANT, *Idea for a Universal History with a Cosmopolitan Purpose*, in *POLITICAL WRITINGS*, *supra* note 8, at 41, 44.

225. See ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* 22 (Edwin Cannan ed., 1937) (defining "commercial society" as the result of the division of labor and the widespread reliance on market exchange for subsistence).

226. JOHANN GOTTLIEB FICHTE, *THE CLOSED COMMERCIAL STATE* (Anthony Curtis Adler ed. & trans., SUNY Press 2012) (1800); ISAAC NAKHIMOVSKY, *THE CLOSED COMMERCIAL STATE: PERPETUAL PEACE AND COMMERCIAL SOCIETY FROM ROUSSEAU TO FICHTE* (2011).

227. John Maynard Keynes, *National Self-Sufficiency*, 22 *YALE REV.* 755 (1933); see also NAKHIMOVSKY, *supra* note 226, at 171–74 (discussing the connection between Fichte and theorist-architects of the postwar economy, including Keynes, William Beveridge, and Gunnar Myrdal).

228. See, e.g., DANI RODRIK, *HAS GLOBALIZATION GONE TOO FAR?* (1997); SUSAN STRANGE, *THE RETREAT OF THE STATE: THE DIFFUSION OF POWER IN THE WORLD ECONOMY* (1996).

international peace—may be rendered compatible with the global commercial order that the state system made possible.²²⁹

VI. REALIST-UTOPIANISM IN INTERNATIONAL LAW TODAY

What does a realist-utopian theory suggest for analyses of international law and politics today? Broadly, it allows us to reassess the normative foundations of international law from a perspective that insists on the centrality of state sovereignty as its legitimating force. More specifically, the kind of state that Hobbes emphasized—and which would render international anarchy pacific—is a self-conscious, collective construction of its citizens, with overlooked democratic origins. The proper construction of this kind of domestic sovereignty grounds the legitimacy of all legal orders, including the international one. This position comes close to what Capps and Rivers describe as the Kantian position on international law.²³⁰

This perspective reorients the much-discussed question of why nations obey international law.²³¹ The question takes its force from the presumption that states in the anarchical state of nature, lacking a common sovereign, are unconstrained like individuals in the state of nature. The domestic analogy thus inspires the suspicion that international law may not be law²³² since there is no international sovereign. In response, legal scholarship has tended either toward skepticism about international law, owing to its perceived unenforceability,²³³ or toward proposing alternative mechanisms by which legal sanctions might be enforced internationally.²³⁴ However, once we focus on the political character of the well-ordered commonwealth, the question becomes not why states should obey international law, but how we can achieve the

229. See DAVID SINGH GREWAL, *NETWORK POWER: THE SOCIAL DYNAMICS OF GLOBALIZATION* 45-52, 292-95 (2008).

230. See Capps & Rivers, *supra* note 13. As against this view, Capps and Rivers cite to scholars who mistakenly believe Kant's philosophy argues for supranational integration of the kind now associated with the European Union. See *id.* at 229-30; see also sources cited *infra* note 258.

231. See, e.g., Koh, *supra* note 11.

232. See D'Amato, *supra* note 11; see also José E. Alvarez, *But Is It Law?*, 103 AM. SOC'Y INT'L L. PROC. 163 (2009); Thomas Franck, *Remarks*, 103 AM. SOC'Y INT'L L. PROC. 161 (2009); Andrew T. Guzman, *Rethinking International Law as Law*, 103 AM. SOC'Y INT'L L. PROC. 155 (2009).

233. See Bolton, *supra* note 11; see also GOLDSMITH & POSNER, *supra* note 11.

234. See, e.g., Oona Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L.J. 252 (2011).

kinds of states that will work out their domestic commitments by constructing a secure international order.

This reorientation helps us understand a recent controversy over the normative foundations of international law, which has traditionally been understood as a construction of sovereign states. In the last few decades, some scholars and activists have suggested that the legitimacy of international law must be based not on a respect for the states that construct it, but instead on a commitment to universal human rights understood as traceable to individuals.²³⁵ This commitment may include a “responsibility to protect” as a duty imposed on states, which trumps state sovereignty,²³⁶ and justifies humanitarian intervention where states fail in this responsibility.²³⁷ In its strongest form, this view imagines the legitimacy of international law to regulate conflict among states on behalf of a normative objective that trumps the sovereign right of nations to judge threats and defend themselves—even though such self-defense was formerly understood as the foundation of the international order.²³⁸

235. For a discussion of different approaches to the legitimation of human rights (including on “maximalist” and “minimalist” accounts), see R.J. VINCENT, *HUMAN RIGHTS AND INTERNATIONAL RELATIONS* 112-13 (1986). See also MOYN, *supra* note 43 (discussing the history of human rights discourse).

236. See INT’L COMM’N ON INTERVENTION & STATE SOVEREIGNTY, *THE RESPONSIBILITY TO PROTECT* 16-18 (2001). There has been an extensive discussion of this and related questions in the burgeoning literature on global justice. See, e.g., *GLOBAL JUSTICE* (Thomas W. Pogge ed., 2001); DAVID MILLER, *NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE* (2007).

237. See Holzgrefe, *supra* note 43, at 18-20 (discussing the ethics of humanitarian intervention to end massive human-rights violations). For a historical analysis of early modern views on humanitarian intervention (and how they differ from today’s account), see Tuck, *supra* note 137; and for a discussion of humanitarian intervention in Kant, see Williams, *supra* note 23.

238. The tension between a Hobbesian realist utopianism and the modern human-rights framework is probably most pronounced when it comes to international law that presumes to regulate a country’s military conduct. Given the centrality of self-defense to the conception of sovereignty, a Hobbesian realist utopianism must be thought to accomplish not so much an outlawing of conflict via sovereignty-trumping international law, but an overcoming of conflict via the full realization of sovereignty at the domestic level. On the latter view, it is not that conflict among states remains helpful or desirable but is precluded by the force of a higher law that stands above and regulates it; it is rather that the favorable circumstances achieved in a world of properly sovereign Hobbesian states would render war unnecessary, and thus unlikely. For a more optimistic view of what international law may do to regulate interstate conflict, relying on an account of “mediation” rather than “domination,” see Seyla Benhabib, *Carl Schmitt’s Critique of Kant: Sovereignty and International Law*, 40 *POL. THEORY* 688, 702-05 (2012). For a defense of the success of the Kellogg-Briand pact in outlawing war, thus establishing a “new world order” in the form of modern international law, see OONA A. HATHAWAY & SCOTT SHAPIRO, *THE WORST CRIME OF ALL* (forthcoming 2017) (manuscript at 5) (on file with author).

Realist utopianism shows us that this controversy arises out of the traditional (and correct) view of international law as normatively grounded in the sovereignty of the states that construct it. The difficulty is that these states have not all undergone the internal political transformation that would make them capable of achieving a full peace, either domestically or internationally. Thus the problem lies not with the concept of international law itself, but with the difficulties of achieving a peaceful global order among unevenly constituted states: some are strong and obviously sovereign, while others are weak, even “failed,” or otherwise controlled by partial associations of the kind that Hobbes recognized would undermine sovereignty and partly replicate the state of nature within the state.²³⁹ The call for international law to recognize an alternative normative grounding beyond formal interstate respect becomes comprehensible in this light.²⁴⁰

The complexity, from a realist-utopian perspective, is in distinguishing those states that are genuinely failed—that is, whose citizens now exist in the functional equivalent of a renewed interpersonal state of nature—from states that are not well ordered but continue to function at least partly as a sovereign should. Humanitarian intervention into a genuinely failed state that has devolved into anarchy would be limited only by the thin requirements of natural law and considerations of prudence.²⁴¹ By contrast, many of the controversies over humanitarian intervention in the last two decades have concerned interventions into stable but authoritarian states, sometimes justified on grounds of achieving peaceable international relations through forced regime change. A realist-utopian perspective would treat this project of regime change with great caution, where it is not a necessary feature of self-defense, and would be alert to the dangers of foreign policy based on what Hobbes understood as glory or vainglory.²⁴²

More broadly, to confront this problem is to recognize the limits of the realist-utopian framework under current political conditions—namely that the

239. See TUCK, *supra* note 17, at 202 (discussing Hobbes’s and Rousseau’s opposition to partial associations).

240. This problem was managed up to the mid-twentieth century through a division of states according to the category of civilization, with Westphalian presumptions attaching to civilized states and “civil[izing]” intervention supposed for the rest. See EDWARD KEENE, *BEYOND THE ANARCHICAL SOCIETY: GROTIUS, COLONIALISM AND ORDER IN WORLD POLITICS* 99, 120 (2002).

241. On international liberalism as proposing a set of thin requirements, see TUCK, *supra* note 17, at 14.

242. A foreign policy based on glory or vainglory could include both obviously imperial adventures but also wars undertaken for ostensible humanitarian reasons in which the intervening country has overestimated its capacity to achieve its ends; for Hobbes’s discussion of glory and vainglory, see *supra* text accompanying notes 165–166.

radical domestic transformation it calls for has yet to be achieved universally. Domestically, the hope for full political transformation may require a well-ordered commonwealth, but the protections of even an imperfect state are not lightly to be cast aside when compared with the anarchy of the interpersonal state of nature. Internationally, these limits reveal what might be considered a more general problem of transition affecting Hobbes's realist utopianism and similar theories: even if we accept that a system of well-ordered commonwealths could achieve international peace, it remains unclear how states that are not currently well ordered can become so while simultaneously contending with a disordered international system. In other words, just as there may be a virtuous circle linking civil order and international peace, there may also be a vicious circle linking distorted or authoritarian domestic politics and international violence.²⁴³ International threats may hinder the ability of states to become well ordered internally, while, reciprocally, the transition to international peace may be forestalled while states remain disordered.

There is no obvious solution to the problem of transition, which recurs in any theory that proposes domestic changes allegedly conducive to international peace. Kant relied on a philosophy of history to show how his project of international peace could be achieved,²⁴⁴ while Rawls focused on several key facts about present society that suggested to him the possibility of "reconciliation" between the status quo and the obviously unrealized demands of justice.²⁴⁵ A parallel problem of transition was debated after the Russian Revolution by socialists who followed Karl Marx and Friedrich Engels in supposing that socialist states would not fight one another,²⁴⁶ but who were divided over whether the transition to that new equilibrium would require world revolution (that is, coordinated change in the domestic constitution of

243. See Christopher Layne, *Kant or Cant: The Myth of the Democratic Peace*, INT'L SECURITY, Fall 1994, at 5, 44-45 (arguing that international politics is a crucial element in shaping domestic political systems, and that a high-threat international environment may foster authoritarian domestic regimes).

244. KANT, *supra* note 200, at 51-53.

245. See RAWLS, *supra* note 189, at 124-25.

246. We might call this "socialist peace theory." In an analysis of the Franco-Prussian War of 1870, Marx wrote:

The very fact that while official France and Germany are rushing into a fratricidal feud, the workmen of France and Germany send each other messages of peace and goodwill . . . opens the vista of a brighter future. It proves that in contrast to old society, with its economical miseries and its political delirium, a new society is springing up, whose International rule will be *Peace*, because its national ruler will be everywhere the same—Labor!

KARL MARX, *First Manifesto on the Franco-Prussian War*, in *THE CIVIL WAR IN FRANCE AND OTHER WRITINGS ON THE PARIS COMMUNE* 29, 35-36 (E. Belfort Bax trans., 1998).

all major countries) or could proceed via socialism in one country (that is, through the successful example of Communist Russia).²⁴⁷

Nevertheless, the realist-utopian framing suggests some courses of action where the well-ordered nature of commonwealths is uneven, and the international system as a whole is not yet peaceable. Hobbes's general injunction was "*to seek peace when some hope of having peace exists, and to seek aid for war when peace cannot be had.*"²⁴⁸ Applying this injunction to a world of imperfectly constituted states might suggest a set of thin principles of genuinely universal international law, alongside a set of ad hoc strategies for dealing with the problems resulting from the malconstitution of so many existing states. Abstracting from his more detailed assessments, we can read Rawls's *The Law of Peoples* in this vein, offering an attempt to distinguish those states among which an international peace could obtain and a set of principles for interacting humanely and prudently with the rest (including what he called "decent hierarchical" societies and "burdened" states).²⁴⁹

International law has a role to play in the construction of international regimes in a world in which states differ in their well-ordered nature and tendency toward peaceable external relations. However, in the realist-utopian frame, the legitimacy of international law must remain grounded in respect for state sovereignty, where sovereignty is understood as the construction of citizens within states and not merely an external-facing attribute of states. One further implication of this view of legitimacy would be a critical, cautious approach not only to humanitarian intervention (outside the special case of genuinely failed states, which are not sovereigns) but also to schemes of global governance that might undermine state sovereignty, understood in the fullest

247. See Joseph Stalin, *Introduction* to NA PUTIAKH K OKTIABRIU [ON THE ROAD TO OCTOBER] (1924), reprinted in *SOVIET RUSSIA AND THE WEST 1920-1927: A DOCUMENTARY SURVEY* 289-91 (Xenia Joukoff Eudin & Harold H. Fisher eds., 1957) ("The revolution that has been victorious in one country [Russia] must regard itself not as a self-sufficient entity, but as an aid, a means for hastening the victory of the proletariat in all countries.").

248. HOBBS, DE CIVE, *supra* note 2, at 31. Hobbes considered this advice "*a dictate of right reason*" and a "*law of Nature.*" *Id.*

249. RAWLS, *supra* note 189, at 63-64. Turning from political philosophy to the international-relations literature, a similar division may be seen in what Robert Keohane has called "Hobbes's dilemma," which he analyzed as the problem of international order in a partially globalized world. See Robert O. Keohane, *Hobbes's Dilemma and Institutional Change in World Politics: Sovereignty in International Society*, in *WHOSE WORLD ORDER? UNEVEN GLOBALIZATION AND THE END OF THE COLD WAR* 165, 167-71 (Hans-Henrik Holm & Georg Sorensen eds., 1995). In this case, we can agree with the prognosis—even the orientation to international institutional construction—while resisting the "Hobbesian" appellation for the reasons I have outlined above.

sense as a regime of collective coordination that enables citizens to make their own political decisions.²⁵⁰

Recall again the realist-utopian commitment to state sovereignty as the foundation of international law, visible in Hobbes's (and Kant's) resistance to global sovereignty, whether federated or unitary.²⁵¹ This resistance is based not only on the prudential reasons that Bull diagnosed, namely that the "system of a plurality of sovereign states gives rise to classic dangers, but these have to be reckoned against the dangers inherent in the attempt to contain disparate communities within the framework of a single government."²⁵² It is also based on the conviction that the kinds of states capable of constructing a legitimate international sovereign would be precisely the states that would not need to do so. The demand for a global Leviathan or, more modestly, forms of sovereignty-trumping transnational governance, thus reflects the failure of the domestic political transformation that Hobbes envisioned, along with a lack of confidence in the mechanism that grounded Kant's theory of international peace—which is, as Capps and Rivers summarize, that "properly constituted states through their collective actions could perform the administrative functions of the international legal order."²⁵³

More worryingly, the push for many new forms of global governance may reflect an ambition to limit the reach of democratic control by trumping national sovereignty. Hobbes was deeply suspicious of experts who claimed to be above ordinary politics and to possess special knowledge: priests, lawyers, and professors all came in for his criticism.²⁵⁴ It is not hard to imagine him similarly denouncing the new agents of global governance, who presume to speak on behalf of the people at precisely the level where the people cannot assemble into a sovereign.²⁵⁵ Again, contrary to the caricatured "Hobbesian" view, this usurpation would constitute not the successful imposition of order but rather its negation.

250. See GREWAL, *supra* note 229, at 45-50 (analyzing the dynamics of sovereignty contrasted with those of "sociability").

251. See *supra* notes 202-206 and accompanying text.

252. BULL, *supra* note 25, at 287.

253. Capps & Rivers, *supra* note 13, at 230.

254. See ROBERT P. KRAYNAK, *HISTORY AND MODERNITY IN THE THOUGHT OF THOMAS HOBBS* 73 (1990) (noting Hobbes's criticism of "claims of authoritative wisdom and expert knowledge").

255. See David Kennedy, *Challenging Expert Rule: The Politics of Global Governance*, 27 SYDNEY L. REV. 5 (2005) (criticizing contemporary claims to expertise in global governance).

Similarly, the move to incorporate nonstate actors into what has been described as “transnational legal process”²⁵⁶ must not be allowed to undermine or replace state capacities, including especially domestic political control by citizens over both state and nonstate actors. Otherwise, the result could be an erosion of state sovereignty, including the very capacity to protect international human rights, through what Itamar Mann has recently described as a “dialectic of transnationalism.”²⁵⁷ A related proposal that a realist-utopian analysis would approach with great skepticism is the effort to “disaggregate” sovereignty at the domestic level to construct a global legal order based on “constitutional pluralism”²⁵⁸ or “networked governance.”²⁵⁹ The problem with these projects is that they threaten to undo the tenuous construction of political sovereignty at the domestic level, which is, in the realist-utopian understanding, both the buffer against the dangers of the world and also the only plausible vehicle for achieving a durable international peace through radical political transformation.

Perhaps the most serious challenge to the realist-utopian project along these lines comes from the current drive toward global economic integration, which can have the effect of empowering elite nonstate actors at the expense of

256. Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 183-86 (1996).

257. According to Mann’s analysis, such a “dialectic of transnationalism” occurs “when both policy and its judicial review become transnational” and result, via the unbundling of traditional functions of the sovereign state, in a paradoxical situation where the very rights that international law is meant to uphold go systematically unenforced. Itamar Mann, *Dialectic of Transnationalism: Unauthorized Migration and Human Rights, 1993-2013*, 54 HARV. INT’L L.J. 315, 317 (2013).

258. For analyses of constitutional pluralism and the cosmopolitan legal pluralism, see, for example, Capps & Rivers, *supra* note 13; Mattias Kumm, *The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State*, in *RULING THE WORLD?: CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE* 258 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009), which touches on postnational and transnational constitutional programs; Sweet, *supra* note 13, which claims that European integration is a “Kantian” project; and Peer Zumbansen, *Transnational Legal Pluralism*, 1 TRANSNAT’L LEGAL THEORY 141 (2010), which discusses transnational legal pluralism and also inaugurates a special journal dedicated to analysis of the phenomenon. See also Ralf Michaels, *On Liberalism and Legal Pluralism*, in *TRANSNATIONAL LAW: RETHINKING EUROPEAN LAW AND LEGAL THINKING* 122 (Miguel Maduro, Kaarlo Tuori & Suvi Sankari eds., 2014) (discussing the different ways that pluralism may be understood and arguing that strong legal pluralism is incompatible with liberalism).

259. On networked global governance, see ANNE-MARIE SLAUGHTER, *NEW WORLD ORDER* (2004); Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT’L L. 1 (2002); and Anne-Marie Slaughter, *The Accountability of Government Networks*, 8 IND. J. GLOBAL LEGAL STUD. 347 (2001). See also GREWAL, *supra* note 229 (providing a critical analysis of the rise of global networks); Mann, *supra* note 257, at 321-24.

domestic majorities. Many of the forms of networked or transnational governance discussed above have been justified on grounds of functional economic necessity: the world presupposed by economic globalization is, in essence, a postnational one.²⁶⁰ Ironically, while the neoliberal economic globalization of recent decades is justified on deregulatory grounds, it depends ultimately on a deepening of state capacities, reconfigured for the benefit of powerful private actors.²⁶¹ The problem with this kind of integration is not so much the generic fact of international interdependence as the way that some forms of interdependence may undermine democratic self-government, and thus threaten the political construction of sovereignty.

For example, international legal commitments to economic integration often entail new forms of transnational dispute resolution that bypass national courts, arguably posing new and increasing challenges to democratic sovereignty.²⁶² The challenge of regulating the many forms of private cross-border activity that have emerged as international relations have become pacified²⁶³ seems likely only to increase as the juridical apparatus underlying cross-border commercial and financial flows is regularized and normalized in international law.²⁶⁴ This is not merely a problem for the European Union,

260. GREWAL, *supra* note 229.

261. See David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 LAW & CONTEMP. PROBS. 1, 7-8, 13-14, 18 (arguing that neoliberalism is not merely deregulatory but involves a necessary reconfiguration of state powers).

262. See David Singh Grewal, *The Laws of Capitalism*, 128 HARV. L. REV., 626, 663-64 (2014) (book review) (distinguishing "democracy-enhancing" and "democracy-inhibiting" forms of international integration in the context of economic globalization); Dieter Grimm, *The Democratic Costs of Constitutionalisation: The European Case*, 21 EUR. L.J. 460, 467-70 (2015) (diagnosing the "[d]e-politicisation" that has resulted from judicial activism on behalf of economic integration in Europe); see also ROBERT HOWSE, *How To Begin To Think About the "Democratic Deficit" at the WTO*, in THE WTO SYSTEM: LAW, POLITICS & LEGITIMACY 57 (2007). For a critical account of international governance along these lines, see Robert A. Dahl, *Can International Organizations Be Democratic? A Skeptic's View*, in DEMOCRACY'S EDGES 19 (Ian Shapiro & Casiano Hacker-Cordón eds., 1999); and for a "pragmatic" response, see Andrew Moravcsik, *Is There a "Democratic Deficit" in World Politics? A Framework for Analysis*, 39 GOV'T & OPPOSITION 336 (2004).

263. See GREWAL, *supra* note 229, at 236-37.

264. See Daniel Kalderimis, *Back to the Future: Contemplating a Return to the Exhaustion Rule*, in RESHAPING THE INVESTOR-STATE DISPUTE SETTLEMENT SYSTEM 310, 340-42 (Jean E. Kalicki & Anna Joubin-Bret eds., 2015) (discussing the erosion of democracy owing to the privatized investor-state dispute settlement mechanisms increasingly common in international law). See generally David Singh Grewal, *Network Power and Global Standardization: The Controversy over the Multilateral Agreement on Investment*, 36 METAPHILOSOPHY 128, 138-43 (2005) (criticizing the effort to develop a single set of global rules on cross-border investment).

though the financial crisis in Europe has made it all too clear how international economic integration can become an obstacle to democratic self-government.²⁶⁵

The realist-utopian perspective on international economic integration remains underdeveloped. Hobbes's motivating concern was characteristic of the seventeenth century: state building in the midst of religious conflict. He did not, therefore, consider the puzzle of whether, and how, to maintain state sovereignty in the context of economic globalization,²⁶⁶ a problem that only became acute in eighteenth-century thought and political practice. Kant, as we have seen, sought to synthesize a contractarian political theory with new accounts of commercial pacification. Neither Hobbes's original theory, nor Kant's later proposal for perpetual peace, would seem to address squarely the challenge of current circumstances: understanding and limiting, where necessary, forms of international economic integration that require such an extensively shared cross-border administrative apparatus that the sovereignty of the commonwealth is fractured or usurped. Understanding the many dimensions of this problem in juridical detail suggests the need for further research at the intersection of public and private international law.²⁶⁷

None of this means that a realist-utopian analysis must oppose all projects of international institutional construction. However, this approach would alert us to the dangers posed by any such project that undermines state capacity, especially where state powers are transferred to unaccountable agents.²⁶⁸ Nor is it the case that all forms of networked transgovernmentality necessarily disaggregate or undermine state sovereignty. For example, a variety of

265. See Grimm, *supra* note 262; Wolfgang Streeck, *Markets and Peoples: Democratic Capitalism and European Integration*, 73 NEW LEFT REV., Jan.-Feb. 2012, at 63; see also Susan Watkins, Editorial, *The Political State of the Union*, 90 NEW LEFT REV., Nov.-Dec. 2014, at 90.

266. The most extended discussion of these themes in Hobbes's work is in chapter XXIV of *Leviathan* (concerning the "nutrition" of a Commonwealth), where Hobbes reserves to the sovereign the management of external economic relations as part of a more general scheme of public regulation of the domestic economy. See HOBBS, *LEVIATHAN*, *supra* note 58, at 173-74. In external economic relations, as with the rest of international law, cross-border regulation must remain a prerogative of sovereigns, since the rights that natural individuals would have vis-à-vis sovereign states are limited to a minimal conception of natural rights (i.e., to self-defense).

267. For a historical discussion of this problem, see *supra* notes 222-229 and accompanying text; and for contemporary analyses, see *supra* notes 262-265. See also ANDREW LANG, *WORLD TRADE LAW AFTER NEOLIBERALISM: RE-IMAGINING THE GLOBAL ECONOMIC ORDER* (2011) (exemplifying work that considers public international law and international economic law together in the governance of the global economy).

268. See Robert O. Keohane et al., *Democracy-Enhancing Multilateralism*, 63 INT'L ORG., 1, 2-4, 22-23 (2009) (discussing the criticism that international lawmaking may undermine democracy, and distinguishing "democracy-enhancing" international regimes).

mechanisms, from peer review programs conducted at the country level²⁶⁹ to forms of what Oona Hathaway and Scott Shapiro have identified as outcasting,²⁷⁰ may remain consistent with the goal of seeking the benefits of international cooperation while preserving the essential links between international law, state sovereignty, and political democracy.²⁷¹ These mechanisms may help to generate order among states that are neither uniformly the belligerent agents supposed by the logic of anarchy nor yet the well-ordered commonwealths that we would expect to promote international peace. In sum, international lawmaking and global governance in this uneven world require constant vigilance against changes that would undermine state sovereignty and thereby limit the capacity of existing states to become the well-ordered commonwealths capable of constructing a genuine international peace.

Finally, a realist-utopian perspective may prove useful not only for assessing external relations, but also for the self-understanding of established polities as well. The global war on terror and the humanitarian problems emerging from failed or warring states offer today the most striking manifestations of international disorder. However, neither presents any obvious necessity of remaking the liberal-democratic orders of established states to put them on a permanent war footing,²⁷² nor does either suggest anything more than a contingent accommodation within international law for the current problems of what Rawls called “burdened societies.”²⁷³ An appropriate response to these challenges no doubt demands both prudence and humanity, but the challenges themselves neither suggest fatal problems with the idea of national sovereignty nor require a comprehensive reassessment of

269. See Georgios Dimitropoulos, *Compliance Through Collegiality: Peer Review in International Law*, 37 LOY. L.A. INT'L & COM. L. REV. (forthcoming 2015), <http://ssrn.com/abstract=2169983> [<http://perma.cc/GAY2-TNNX>]; see also, e.g., Okezie Chukwumerije, *Peer Review and the Promotion of Good Governance in Africa*, 32 N.C. J. INT'L L. & COM. REG. 49 (2006); Markku Lehtonen, *Deliberative Democracy, Participation, and OECD Peer Reviews of Environmental Policies*, 27 AM. J. EVALUATION 185 (2006); Sanjay Reddy & Antoine Heuty, *Peer and Partner Review: A Practical Approach to Achieving the Millennium Development Goals*, 6 J. HUM. DEV. 399 (2005); Andrew Tyler, Note, *Enforcing Enforcement: Is the OECD Anti-Bribery Convention's Peer Review Effective?*, 43 GEO. WASH. INT'L L. REV. 137 (2011).

270. Hathaway & Shapiro, *supra* note 234.

271. See generally ROBERT O. KEOHANE, *INTERNATIONAL INSTITUTIONS AND STATE POWER: ESSAYS IN INTERNATIONAL RELATIONS THEORY* (1989) (discussing the ways in which international cooperation may be compatible with the self-help of sovereign states).

272. See OWEN FISS, *A WAR LIKE NO OTHER: THE CONSTITUTION IN A TIME OF TERROR* (2015) (analyzing the damage to individual liberty under the U.S. constitutional order from legal changes justified as necessary responses to the ongoing “war on terror”).

273. RAWLS, *supra* note 189, at 106. See generally *id.* at 106-10 (discussing the duty of “well-ordered peoples” to assist “burdened societies”).

the normative foundations of international law. It should not be forgotten that Hobbes lived in a time of civil war, failed states, and religious fanaticism, including cross-border acts of terror against civilians. The well-ordered commonwealth was, he thought, not an obstacle to effective action to address these problems but precisely its vehicle.

CONCLUSION

This Essay has considered Hobbes's understanding of international relations as a realist-utopian account that expected far more from the institution of civil sovereignty than many modern scholars recognize. This interpretation seeks to account for Hobbes's unwillingness to sanction a global sovereign alongside his keen recognition of international conflict. It thus revisits the domestic analogy that Bull identified and argues that Hobbes offered a solution to both civil and international disorder in the institution of the well-ordered commonwealth. Hobbes did not believe that in a world of sovereign states we must choose either the endless war of international anarchy or the evil of global tyranny. Rather, this way of thinking reflects our failure to consider domestic and international politics together in Hobbes's realist-utopian relief.

In considering a range of problems from humanitarian intervention through to international economic integration, Hobbes's realist utopianism continues to provide a powerful theory and a needed corrective, not only to the narrowly defined realism that has long claimed his imprimatur, but also to realism's rivals, which unwittingly persist in its fundamental framing. Critics of the realist position may be surprised to discover that they have overlooked their greatest theoretical predecessor and ally: Hobbes.

